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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KIMBERLY DOWADAIT,
as Personal Representative of the Estate
of ROGER DOWADAIT, Deceased.

Plaintiffs,

vs.

Case No. 04-71124
Lower Court Case No. 04-404800-NO
Hon: Lawrence P. Zatkoff

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

_____/

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**PLAINTIFF'S REPLY BRIEF
REGARDING ROOM AND BOARD EXPENSES,
TOLLING AND FRAUD**

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INTRODUCTION

On May 12, 1995, Roger Dowadait was involved in an automobile accident that rendered him a quadriplegic and confined him to bed until his death on November 4, 2003.

Since returning to his home in 1995, following his initial medical care and treatment, Mr. Dowadait's wife, Kimberly had been rendering services to him of an attendant care nature similar to that of a high tech licensed practical nurse until his death. For her care of her husband, Mr. Dowadait was paid substantially less than the reasonable market rate for her care. State Farm was paying Mr. Dowadait $6.50 per hour for attendant care services while paying home health aid companies in excess of $12.00 to $13.00 per hour for the same services. In addition, State Farm was aware that Mrs. Dowadait was providing care equivalent to a licensed practical nurse with a fair market rate of $53.00 to $62.00 per hour. Despite this knowledge, Defendant, through its employees, continued to pay Mrs. Dowadait, $9.50 per hour as this claim progressed.

Mrs. Dowadait had been trained on how to catheterize her husband every two to three hours per day and to perform a bowel program which takes two to three hours per day as well as physical therapy range of motion exercises and preparing meals. The Defendant does not dispute in this case that Mr. Dowadait was in need of 24 hour attendant care and that his doctors, in fact, indicated so.

In this case, Mrs. Dowadait has been caring for her husband with identical care provided by a nursing facility and she has been paid substantially less. State Farm Insurance Company has never formally denied claims made by the Plaintiff that he is entitled to be paid

more for the services being provided to him.

Under the Michigan Unfair Trade Practices and Frauds Act MCL 500.2003 and MCL 500.2005, the Defendant's and its agents, employees and assigns are precluded from participating in unfair trade practices and/or frauds with respect to insurance. Specifically, the Defendant is prohibited from ". . . misrepresenting the terms, benefits, advantages, or conditions of an insurance policy." MCL 500.2005 (a).

STATEMENT OF FACTS

This cause of action arises out of a no fault claim for benefits for Plaintiff who was rendered a quadriplegic on May 12, 1995. Plaintiff's claim is essentially that the Defendant fraudulently cheated the Plaintiff of attendant care benefits as well as room and board benefits.

State Farm's adjusters have maintained an activity log with entries for their actions on this claim. Plaintiff will attach portions of the entry log as a group exhibit. The Activity Log has stamped bates numbers in the lower right hand corner and Plaintiff will refer to those numbers when referencing these exhibits. On October 1, 2002, Defendant's adjuster, Linda Swagler made a notation in the Activity Log stating:

> ". . . wife provides care equivalent to that of LPN . Duties include the following which are different from HHA (home health aid). They include the following: wound care, one person transfers, transfers using hoyer lift., bowel program, insert of catheters, Kim (Plaintiff's wife) has been trained in same and doing same since MVA., the $18.00/hr was incorrectly stated., actually we pay Kim $9.50 an hour for HHA and pay ten hours per month for the LPN duties at $9.50 an hour commercial high tech LPN rates for commercial companies run $53.00 to $62.00 an hour . . . " ***(Please see Group Exhibit A).***

On January 25, 2000, Linda Swagler noted that Mrs. Dowadait is providing care for her husband and he is doing extremely well under her care. Swagler noted that we were paying her

$9.50 per hour when the commercial rates run $13.35 to $18.00 an hour. ***(Please see Group Exhibit A).***

In a 2003 entry, Defendant's Activity Log indicates that they are paying $13.50 an hour for the attendant care services for Mrs. Dowadait and they are paying $22.00 an hour to a commercial company providing the same level of care. ***(Please see Group Exhibit A).***

In November of 1997, Defendant's Activity Log note indicates:

> "Effective tomorrow, attendant care is only 8 hours per day at $9.50 an hour or $76.00 per day." ***(Please see Group Exhibit A).***

This entry is made despite the fact that Defendant was aware that Mr. Dowadait required 24 hour attendant care. In September of 1996, the Defendant's adjuster noted in the Activity Log "Roger was discharged on August 26th, he is currently in a barrier free apartment at $895.00 per." ***(Please see Group Exhibit A).***

This is clearly an indication on the part of the Defendant's adjuster that Mr. Dowadait's room and board at a reasonable commercial rate is $895.00 per month. Despite this, the Defendant never paid any room and board to the Plaintiff. ***(Please see Group Exhibit A).*** Plaintiff has taken the deposition of Douglas Vredeveld, who was the team manager for Linda Swagler. Mr. Vredeveld acted as her supervisor with State Farm. In his deposition, Mr. Vredeveld admitted that it would be fraudulent for an adjuster to knowingly pay less for benefits than what was owed. ***(Please see Exhibit B).***

In addition to Mr. Vredeveld, Lynn Deneau, who was a claims processor in the Personal Injury Protection Department for State Farm was deposed. She testified

> "I am not familiar with room and board. . . I don't have any claims that I pay

room and board on, . . .

And then she was asked:

Q "And you have never presented to an insured the right to pursue a room and board claim?
A No I have not."
(Please see Exhibit C).

Doreen Smith is another employee of State Farm whose deposition was taken. She is a Claims Superintendent with State Farm at the relevant time period of this claim. Ms. Smith was asked:

Q "And State Farm if there going to be like a good neighbor, which their slogan used to be, has a claim rep steeling money from an insured by not paying them and the supervisor doesn't catch it, that's inappropriate, isn't it?
A That would not be fair.
Q It would be unreasonable, wouldn't it?
A In the context of only what you are telling me, yes."
(Please see Exhibit D).

Ms. Smith was asked regarding the disparity between the $62.00 an hour that the Adjusters Log indicates would be the market rate to pay Mrs. Dowadait and the $9.50 an hour that she was being paid, whether there would be sufficient overhead for a company charging that as a commercial rate to reduce the compensation from $62.00 to $9.50 an hour to which Ms. Smith answered

"no it appears to be unfair."
Q And unreasonable?
A And unreasonable"
(Please see Exhibit D).

With reference to the Activity Log note ***(Exhibit A)*** indicating that Mrs. Dowadait was providing high tech LPN care, this Claim Superintendent indicated that it is a pretty clear and

unambiguous statement in the Activity Log. ***(Please see Exhibit D).***

Patti Selasky-Benie was also deposed. She was employed with State Farm as a Claims Representative. She testified in her deposition that State Farm has a Fraud Department to investigate or discover fraud committed by claimants and/or providers. She testified further that State Farm does not have a Fraud Investigation Unit to determine underpayment or non-payment by adjusters. She also testified she never had a manager at State Farm tell her that room and board benefits were owed. She testified that as a Supervisor/Manager, she was unaware of the existence of these types of benefits. She was then asked:

Q "If you as the adjuster don't know about that benefit that's owed, and your supervisor or manager does, and they don't disclose it, they don't tell you about it, would that be fraud?
A In my opinion if they purposely did not tell us that or withheld that yes.
Q And in your opinion, if they knew that it was owed, the law said it was owed, the case law was there and they didn't train you on it, other adjusters like yourself since 1985 and earlier, there were cases that said room and board was a benefit that was owed under circumstances like this case, would that be fraud?
A If they purposely withheld the information, again I believe that would be fraud by not telling us.
Q If the attorneys had advised management that room and board benefits were owing in no fault cases since at least 1985, since **Manley**, you would have to be informed of that wouldn't you?
A Yes.
Q So to your recollection, since 1985 in **Manley**, you have never been advised by anyone at State Farm as to room and board benefits?
A In my recollection with my time in the company, I have not.
Q And your recollection is you have never paid such a claim or advised people of their entitlement to such a claim?
A To my recollection, no I have not."

(Please See Exhibit E).

In addition to the above employees, Plaintiff has already deposed Cindy Gronlund who

was also a Team Manager at State Farm. Ms. Gronlund admitted that a family member is entitled to be compensated for the services provided. She also admits that if a claim representative from State Farm would indicate that a person is qualified and capable of performing a certain level of service, then the next thing you would look to to determine the rate of compensation is the value of the service. She was then asked:

Q "Now failure to pay what you know to be the reasonable customary market rate to someone you know is qualified and competent in providing the service, would be at a minimum inappropriate, wouldn't it?
A Yes.
Q It could be fraudulent as well, couldn't it?
A I would agree that it was fraudulent. I suppose it could be. It could be a mistake. It could be a lot of things.

. . .

Q Does fraud mean to you mean where someone has done this but they've done it intentionally as opposed out of ignorance?
A I think that's how I'm interpreting what you're saying, yes."

Ms. Grunland was then asked:

Q "And that would apply equally to a State Farm provider, or insured, or adjuster or claim rep, correct? Because I've asked you for your definition in the claims handling process with State Farm, that should apply across the board to everybody, shouldn't it?
A In the context that you're explaining it, yes.
Q Well I didn't explain it, you did. You gave me what a claims manager, team manager's view with State Farm of what fraud is. And I asked you based on that whether you're taking it or keeping it, whether it should apply straight across the board to everybody involved in the claims handling process and you agreed that it should, correct?
A In the context that you've explained it, yes."

Ms. Gronlund testified that if Linda Swagler paid $9.50 an hour for a service determined to be worth $53.00 to $62.00 an hour and it was intentional, it would be fraudulent.

Finally, she was asked:

Q "And if we go back to what we talked about before as fraud, it meets the definition again of fraud, doesn't it.

. . .

A As we defined it before, yes.
Q And is that type of activity that State Farm wants its insured's to receive?
A No."

(Please see Exhibit F).

Mrs. Dowadait's deposition was taken and she was asked questions relative to the amount of monies that her husband was being compensated by State Farm for her attendant care. She was asked:

Q "And you agreed to the rate that she proposed?
A No.
Q You told her no, you're not going to accept that rate.
A No. I was told by her that that's the rate that I was entitled to as a family member and eight hours per day.
Q And you questioned that?
A **Yes.**

(Please see Exhibit G).

Mrs. Dowadait also testified that within the first month of her husband's accident when she was providing attendant care, she was told by Derinda Flannery that she was entitled to only $7.50 an hour and that was all that she was going to get. ***(Please Exhibit G).***

The deposition of Linda Swagler was taken after this court's order on February 24, 2005. In her deposition, Ms. Swagler testified that she had had conversations with management at State Farm and in particular, Stacey Sherek, who was a section manager, about room and board benefits that Ms. Swagler believed the Dowadaits were entitled to. According

to her testimony, Ms. Swagler indicated that management at State Farm told her not to pay room and board benefits, that she was wrongly interpreting the Manley case. At the time that they were discussing this issue, Ms. Swagler was handling the Dowadait file and had paid no room and/or board benefits to the Dowadaits. According to Ms. Swagler, Mr. and Mrs. Dowadait were entitled to room and board benefits at this time and that State Farm ordered her not to pay them. Ms. Swagler also testified that she was aware that Ms. Dowadait was providing a level of benefits to her husband equivalent to a licensed practical nurse and that she had determined that the rate for a license practical nurse, by doing a commercial market rate survey, was higher than the rate that State Farm was paying Ms. Dowadait. She further testified that the underpayment was not an oversight, that it was intentional and that she was ordered not to pay more than what she was paying by State Farm Management.

In addition, she testified that Norah Cimaglia was a catastrophic claims handler who was involved in the Dowadait claim. Ms. Swagler testified that she went to Norah Cimaglia about increasing the rate of payment to the Dowadaits only to have Norah Cimaglia tell her that the rate that they were paying that Linda Swagler knew was being underpaid was sufficient. Ms. Swagler testified that Norah Cimaglia's husband was the contractor hired by Defendant, State Farm to perform home modifications and repairs on the Dowadait's home. She further testified that the Dowadaits were unhappy with the work performed by Norah Cimaglia's husband and that Norah Cimaglia herself was unhappy with the Dowadaits because they were complaining about the work that was performed by her husband. ***(Please See Exhibit H, Pgs. 36,37,38,47,49,50,51,52, 53,54,56,57,58,59 and 60 of Linda Swagler's***

Deposition).

The Defendant's own adjusters have made numerous notations in the file of the level of care that Mrs. Dowadait had provided to her husband and the fact that it was not only appropriate but excellent care.

On November 4, 2003, Roger Dowadait died. On January 17, 2003, Mr. Dowadait commenced this litigation in Wayne County Circuit Court.

LAW AND ARGUMENT

A. Plaintiff is Entitled to A Room and Board Claims As He Was Eligible to Receive Room and Board Benefits Following His Discharge From the Hospital.

The Michigan Supreme Court recently decided the case of Phyllis L. Griffith v State Farm Mutual Automobile Insurance Co., Slip Opinion No. 122286 ***(Exhibit I)***. In the very first paragraph, the Supreme Court indicated:

> **"In this case, we consider whether the No Fault Act, MCL 500.3101 et. Seq., requires Defendant, a no fault insurer, to reimburse plaintiff for her incapacitated husband's food expenses. Because the food in this case is neither 'for accidental bodily injury' under MCL 500.3105(1) nor 'for an injured person's care, recovery or rehabilitation' under MCL 500.3107(1)(a), we hold that the expenses for it may not be recovered under those provisions of the no-fault act."**

The only issue that Griffith decided was whether or not food expenses could be claimed as care and/or rehabilitation expenses under the no-fault act if those food items and expenses were not part of a care and rehabilitation plan were not different in kind than food that was consumed nor would have normally had been consumed absent the accident.

Thereafter, the court went through the underlying procedural history of the Griffith case. On P. 17 of the Slip Opinion, the Court stated:

> "In fact, if Griffith had never sustained, or were to fully recover from, his injuries, his dietary needs would be no different than they are now. We conclude, therefore, that his food costs are completely unrelated to his 'care, recovery or rehabilitation' and are not 'allowable expenses' under MCL 500.3107(1)(a)."

There is nothing whatsoever in the Griffith Decision that holds that Plaintiff's claim for room and board is not an allowable expense. The Defendant would have this court believe that the Supreme Court intended a decision much broader than that which they wrote. If the Michigan Supreme Court in Griffith had determined that room and board were not allowable expenses, somewhere within the body of their lengthy opinion, they would have made that decision clear. No such holding has, in fact, been made.

Defendant does not dispute the fact that Roger Dowadait was in need of attendant care since the date of his accident. They have not however, paid him room and board benefits.

On May 29, 1986, the Michigan Supreme Court decided the case of Manley v DAIIE, 425 Mich 140 (1986). Manley is one of the seminal cases in Michigan No Fault Law dealing with attendant care and room and board benefits. In Manley, the defendant was AAA. The same defendant as in the case at bar. Manley involved claims for room and board benefits as well as attendant care. In Manley, the court upheld that a jury verdict finding that **$30.00 was the daily cost incurred by Plaintiffs in providing room and board for a child severely injured in an automobile accident**. It is difficult to imagine how this defendant can claim 20 years later that it was unaware of entitlement to room and board benefits to its insureds who meet the Manley requirements.

The Manley Court held that the parents, pursuant to MCLA 500.3107 were entitled to

collect room and board benefits. Of important note is a finding by that Court over twenty years ago, that the parents were entitled to $30.00 per day for expenses for room and board benefits. In Manley, the trial court was also asked to provide declaratory relief. The Supreme Court held that while no fault automobile insurers are not required to pay allowable expenses until actually incurred, the trial court is not precluded, when a dispute arises, from entering a declaratory judgment determining that a continuing expense is both necessary and allowable. Manley at 157.

As in the case at bar, the Manley court found that the Plaintiff would not regain his faculties and that some nurses aids will probably be required for the rest of his life. The court upheld the juries findings that $30.00 per day for provision of room and board benefits including services for the Manley's from the time of his accident through to the time of the trial was supported by the law and the evidence.

Defendant is again attempting to have this Court believe that Griffith has a holding broader than that which is contained within the body of its Opinion and Order. Griffith dealt only with the issue of entitlement to food. The Defendant, under Manley, would be obligated to pay as a medical expense, costs associated with housing the Plaintiff, which would include utilities, gas, electric, telephone, all of which the Defendant would have to pay for the Plaintiff if she was otherwise institutionalized.

Defendant does not dispute that they had previously paid $895.00 per month for the Plaintiff to live in an apartment. The Defendant would not have made the $895.00 payment had it not been obligated to do so as a result of Manley v ACIA. The payment of rent is a

medical payment necessitated by injuries sustained by Roger Dowadiayt in his automobile accident which rendered him incapable of caring for himself and he would have otherwise been institutionalized if it were not for the care provided by his family.

B. The Plaintiff's Claim for Additional No Fault Benefits Is Not Limited to The Period Extending From February 18, 2003 to February 18, 2004.

In relying on Grant v AAA Michigan Wisconsin, Inc., _____ Mich App _____ (2005), the Defendant is overreaching. In the Grant case, the defendant argued that Plaintiff filed a Michigan Consumer Protection Act claim as nothing more than a no fault claim relabeled as an MCPA claim. The court in Grant, reviewing the decision De Novo made factual determinations as to whether or not the claim in Grant was merely a restatement of a no fault claim.

This Court has already ruled on these very same motions that Plaintiff has, in fact, pled a cause of action for fraud, breach of fiduciary duty and violation of the Michigan Consumer Protection Act separate and distinct from a standard or typical Michigan no fault claim.

Defendant argues that the Grant decision makes clear that Plaintiff may not recover in the instant case for any losses incurred from the date of the accident until one year prior to the filing of this Complaint. This is truly not the holding in the Grant case.

In Grant, the Court of Appeals panel cited Crown Technology Park v D&N Bank, FSB, 242 Mich App 538 (2000). Crown was a claim where the Plaintiff relied on oral promises to waive a contractual provision providing for a pre-payment penalty on a promissory note. The Statute of Frauds requires that such promises be in writing to be enforceable. The court in Crown held that the plaintiff could not couch its claims as claims for promissory estoppel and

negligence in order to avoid the requirement of a writing under the Statute of Frauds.

In Grant, the court held:

"We will not rely on the superficial language of the complaint while ignoring its substance."
Crown at 554.

The Defendant in the case at bar is asking the Court to overlook the substance of Plaintiff's claim unlike the court in Crown and Grant which arguably looked to the substance of what was alleged. In the case at bar, Plaintiff has continuously pointed out to this court horrendous facts of fraud, deception and misconduct by the Defendant as it relates to the Dowadait claim. For this court or any court to overlook the substance of this factual record would be a crime in and of itself. This Defendant is shockingly concerned about these facts of fraud so much so as to make every conceivable attempt to have this court dismiss Plaintiff's theory so as to prevent these facts from ever getting to the light of day before a jury.

The very issues this Defendant is asking the Court to rule upon have already been decided. This Court has already decided that Plaintiff has pled a proper MCPA claim, a proper claim of fraud, and a proper claim for breach of a fiduciary duty all separate and independent of each other. Unlike the Plaintiff in Crown, Supra, Plaintiff in the Dowadait claim is not trying to turn a claim on a promissory note required to be brought under the Statute of Frauds as a simple claim of negligence or promissory estoppel to avoid a fundamental requirement that the claim have a writing under the Statute of Frauds. If anything, it is the Defendant who is trying to hide from the facts of this case in attempting to change the nature of what Plaintiff is in fact alleging and can prove to prevent these facts from ever reaching a jury. In this case,

Plaintiff, as this court has already seen in prior motions for summary disposition, is able to present sufficient proofs on a claim for breach of the Michigan No Fault Act, breach of the policy of no fault insurance with Defendant, State Farm, breach of a fiduciary duty, violation of the MCPA, and has in fact, committed fraud, all of which are separate and distinct theories and claims. Plaintiff is not attempting in this case to bypass a fundamental requirement as in Crown of a writing necessary under the Statute of Frauds to present these claims.

The Grant case offers nothing new to this court that has not already been presented in previous motions for summary disposition. It is essentially a motion for rehearing or reconsideration, improperly filed under the Federal Court Rules of Civil Procedure.

Finally, there is noting in the Grant case that deals with the issues of fraud and whether the Defendant conspired or committed acts of fraud is a question of fact. A jury could conclude that the Defendant's actions in committing fraud were also violations of the Michigan Consumer Protection Act, breach of a fiduciary duty and that the Defendant should not be allowed to commit acts of fraud and when discovered claim that these should have been brought within one year essentially rewarding the Defendant for their brazen and callous act of committing fraud against its insured.

There is nothing in the language of the No Fault Act or its legislative purpose that requires a construction abolishing the common law right to bring a claim for fraud or breach of a fiduciary duty. In Rusinek v Schultz, Snyder & Steele Lumber Co., 411 Mich 502 (1981), our Supreme Court held that the common law right to recover for loss of consortium was not abrogated by enactment of the No Fault Statute. The well established principle of statutory

construction is that statutes which abolish a common law right should be strictly construed. Adams v Auto Club Insurance Association, 154 Mich App 186 (1986). Approximately thirteen years ago in Auto Club Insurance Association v New York Life Insurance Co., 440 Mich 126 (1992), ACIA successfully argued to the Michigan Supreme Court that the Michigan No Fault Act, Sec. 3145(1) did not bar their subrogation claim, a common law claim. In the course of its decision in ACIA v New York Life Insurance Co., this court also cited with favor the following language from the Court of Appeals Decision in Adams v Auto Club Insurance Association, Supra:

> "Because Defendant's actions seeking recovery for amounts over paid involves a common law right of action, the limitation found in Section 3145(1) is not applicable. Since there is no other statute of limitations directly applicable, the general six year limitation period argued by Defendant must be applied."

Because Plaintiff's alternative theories of recovery, based on the common law and another statutory provision, do not represent claims for damages "payable under this chapter" as Section 3145(1) provides, the statute of limitation provided in that statute, cannot applied to these claims.

All prior arguments and motions for summary disposition have been denied. It would appear that the Defendant's position is that because the Michigan No Fault Act is codified by statute, that there can never be a fraud claim with respect to Michigan No Fault benefits. Clearly this is not the case. On Plaintiff's fraud theory, the element of damage is the Plaintiff's no fault benefits. In other words, the jury will be asked to determine what the no fault benefits the Plaintiff was entitled to but which were fraudulently concealed or misrepresented to him and they can determine that that is the nature and extent of his damages.

To take the Defendant's argument to its illogical conclusion, there could be no theory presented by a Plaintiff in the State of Michigan for fraud for any violation of a statute by a Defendant, no matter how despicable, under handed and deceitful that misrepresentation and/or concealment of those statutory rights were.

Plaintiff has argued from the time this claim was filed that both the RJA and fraud have tolled the statute of limitations regarding any claims brought by Roger Dowadait. It was Plaintiff's position that MCL 600.5851(the insanity provision) tolled any statute of limitations with respect to Plaintiff's claims. Plaintiff, however, has openly relied upon fraud and misrepresentation as also tolling the statute of limitations and has in fact, pled it specifically.

MCL 600.5855 is a statutory tolling provision for fraudulent concealment and is applicable to this case. In addition, common law fraud, concealment, silent fraud also toll the statute of limitations.

MCL 600.5855 states in relevant part:

> "If a person who is or may be liable for any claim fraudulently conceals the existence of the claim . . . from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within two years after the person who is entitled to bring the action discovers, or should have discovered the existence of the claim . . . , although the action would otherwise be barred by the period of limitations.

The purpose of 600.5855 is to protect people, like Roger Dowadait from the fraud perpetrated against them by their own insurance company. The statute of limitations is a beneficial law designed to prevent delay in bringing suit for such period that the opposite party would lose or may mislay the evidence necessary for his defense or by death, forfeit the

benefits of testimony of witnesses, **but is not intended to protect or shield anyone in the enjoyment of the fruits of fraud**. Schram v Burt, 111 F.2d 557 (1940).

The Defendant should be estopped from arguing the statute of limitations due to their fraud. Generally, to justify application of estoppel, one must establish that there has been a false representation or concealment of material fact, coupled with an expectation that the other party will rely upon that conduct, and knowledge of the actual facts on the part of the representing or concealing party. Lothian v City of Detroit, 414 Mich 160 (1982).

Michigan law recognizes that failure to disclose a material fact necessary to prevent a false impression is as much a fraud as a positive misrepresentation. It is not essential that the pretenses by which a fraud is accomplished be expressed in words. Michigan National Bank v Marston, 29 Mich App 99, 104 (1970). In Michigan law, even without a fiduciary relationship, a party is under a duty to use diligence in making a complete disclosure of facts for partial disclosure may convey false impressions and mislead the plaintiff. Such half truths or non-disclosures are considered by concealment of facts and therefore, misrepresentations. Groening v Opsata, 323 Mich 73 (1948); Equitable Life Insurance of Iowa v Halsew, Stuart & Company, 312 U.S. 410, 425-426 (1941). The parties need not be in a fiduciary relationship, all that is required is that circumstances exist such that one party "in good faith is duty bound to disclose" a particular fact. M & D, Inc. v McConkey, 231 Mich App 22, 28 (1998).

In Hearn v Rickanbacker, 140 Mich App 525 (1985), the Court of Appeals held that there is a relationship of trust and confidence between an insurer and its insured which, although not a fiduciary one, gives rise to a duty for the insurer to deal fairly with its customers

apart from any contractual obligations owed.

The court in Hearns cited Drouillard v Metropolitan Life Insurance Company, 107 Mich App 608, 621(1981):

> . . . there is a relationship of trust and confidence which the court will recognize as sufficient to permit an action for fraud to be predicated upon a misrepresentation.

In Michigan, it is black letter law that whether or not there is fraud, is a question of fact for the trier of fact as opposed to a question of law. Fraud is a question of fact to be determined on the basis of all existing circumstances. Courtland Manufacturing Company v Plat, 83 Mich 419 (1890); Krause v Arthur Murray Studios of Michigan, Inc. 2 Mich App 130 (1965).

The elements of silent fraud are similar to fraud and misrepresentation, expect that a specific inquiry is required and there involves a suppression of a material fact which a party in good faith is duty bound to disclose. M & D v McConkey, 226 Mich App 801, 807-808 (1997). In the case at bar, that requirement has been satisfied.

The case cited and relied upon by Defendant Grant does not stand for the proposition that Plaintiff is not entitled to pursue a claim for fraud or fraudulent concealment of Plaintiff's benefits or fraudulently covering up a violation of the Michigan Consumer Protection Act among others. In fact, the case at best stands for proposition that a single Court of Appeals panel that reviewing De Novo the factual underpinnings of one case found that what the Plaintiff attempted to do in the case was relabel a claim in order to avoid the statute of limitations. There is nothing in the holding of Grant that says no plaintiff in the State of

Michigan can pursue a claim for fraud or violation of the Michigan Consumer Protection Act against a defendant insurance company.

C. The Plaintiff's Fraud Claim Must Also be Dismissed When Roger Dowadait Was Eligible to Receive Room and Board Benefits Following his Discharge From the Hospital.

Essentially, the Defendant argues that they paid Mr. Dowadait for a benefit known as attendant care but admittedly throughout the body of its brief admits that they did not pay the amount that the Plaintiff was entitled to. The Defendant's argument therefore, is that they did not conceal fraudulently, or otherwise, any benefits as they in fact, paid the benefit of attendant care. This court should be able to see through this rather specious argument and find that the underpayment or non-payment of all benefits due, including full compensation for benefits under the facts and circumstances presented in this claim, would amount to State Farm concealing from the Dowadaits, their entitlement to receive these benefits. The testimony of the Defendant's own adjusters and in particular, Linda Swagler, clearly point out that this was no mistake and that it was intentional on the part of State Farm to defraud, to deceive and to misrepresent entitlement to benefits to the Dowadait family.

WHEREFORE, Plaintiff respectfully requests this Honorable Court deny the Defendant's Motion as the same is unwarranted based upon the facts and case law presented.

Respectfully submitted,

THOMAS, GARVEY, GARVEY & SCIOTTI

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Dated: December 15, 2005

Kelli Camp hereby certify that on December 19, 2005, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:
Plaintiff's Reply Brief Regarding Room and Board Expenses, Tolling and Fraud.

s/Kelli Camp
24825 Little Mack
St. Clair Shores MI 48080
586-779-7810

AUTO
claim number
22-E024-956

ACTIVITY LOG

date	time	entered by	office	region	no
10-02-02	09:17 PM	Burger, Amy	METROECF	Michigan	513

TM, please review reserves. What is life expectancy? Current reserves at $2.2 million.

date	time	entered by	office	region	no
10-02-02	09:12 PM	Burger, Amy	METROECF	Michigan	512

SM authority granted to $2,200,000

date	time	entered by	office	region	no
10-01-02	04:15 PM	Stafford, Arreba	METROECF	Michigan	511

CIOS-PLS RESCAN ITEMS SEPARATELY; THANKS.

date	time	entered by	office	region	no
10-01-02	02:16 PM	Burger, Amy	METROECF	Michigan	509

Will review updated authority request once it it submitted.

date	time	entered by	office	region	no
10-01-02	09:57 AM	Swagler, Linda S	METROECF	Michigan	507

SPOKE TO CM INDICATES SKIN BREAK-DOWN IS OCCURRING AND UTI ISSUE IS VERY DIFFICULT DEFINITE NEED OF HIGH-TECH CARE.

date	time	entered by	office	region	no
10-01-02	09:42 AM	Swagler, Linda S	METROECF	Michigan	506

REVIEW OF LOG 505 WIFE PROVIDES CARE EQUIVILANT TO THAT OF LPN.,DUTIES INCLUDE THE FOLLOWING WHICH ARE DIFFERENT FROM HHA THEY INCLUDE THE FOLLOWING: WOUND CARE, ONE PERSON TRANSFERS,TRANSFERS USING HOYER LIFT.,BOWEL PROGRAM,INSERT OF CATHERTERS, KIM HAS BEEN TRAINED IN SAME AND DOING SAME SINCE MVA.,THE $18/HR WAS INCORRECTLY STATED.,ACTUALLY WE PAY KIM 9.50 AN HOUR FOR THE HHA DUTIES AND PAY 10 HRS PER MONTH FOR THE LPN DUTIES AT 9.50 AN HOUR COMMERCIAL HI-TECH LPN RATES FOR COMMERICAL COMPANIES RUN 53.00 TO 62.00 AN HOUR. 3-4 HOURS PER DAY RATE BY PERFESSIONALS RUN $29/HR. I HAVE CORRECTED AUTH REQUEST RESENT TO TM

date	time	entered by	office	region	no
09-30-02	07:49 PM	Burger, Amy	METROECF	Michigan	505

Authority request reviewed. Please advise how we arrived at $18 an hour for attendant care. Log 501 states that wife provides 18 hours of care per day and professionals 3-4 hours. This equals 21-22 hours per day. What level of care is provided by his wife? What is the appropriate rate?

date	time	entered by	office	region	no
09-30-02	07:37 AM	Swagler, Linda S	METROECF	Michigan	504

ARREBA PLEASE REVIEW INGERSOL CONSULTING BILL WHICH IS LABELED "FILE DOCUMENT" FOR 4/17 TO 5/18/02 PLEASE LABEL THAT CORRECTLY AS A MEDICAL BILL AND PROCESS.

AUTO
claim number
22-P024-956

ACTIVITY LOG

date	time	entered by	office	region	no
01-25-00	10:22 AM	Swagler, Linda	METROPIP	Michigan	110

rev'd current request for payments of rx.,did review rx list and made follow up phone calls to nursing staff at Dr.Youngs office for the following meds' zestril.,for hypertension , lipitor for cholestral control.,and levaquine antibiotic.,the following was advised.,due to his inability to move strokes are a concern the reason for lipitor some of the meds he is on increases blood pressure as well as his injury can result in a blood pressure increase.,the anti biotics are to avoid uninary trac problems with cathing.,

date	time	entered by	office	region	no
01-25-00	10:10 AM	Swagler, Linda	METROPIP	Michigan	109

rev'd file see natres of 11/99 dictated auth request.,roger is doing well does extremely well under care of his wife kim.,she is currently paid 9.50 /hr which I cm rita ingersol go out and do an assessment she found the level of care appropriate which consisted of the following.,:which would equivalent to a high tech aide due to assistance with bowel program.,inc. the following: bed,bath,tub or show bathing.,shampoo, nail and skin care,oral hygiene, cathet er care,m tolieting assistance, shaving,measure and documents blood pressure and temperature, reporting problems to the supervising nurse.,assists with exercise positioning or ambulation.,perineal care.,rates run 13.35 to 18/hr., 9.50 is appropriate at this time.,no mcca reporting due.,await dictated auth'r request.,

date	time	entered by	office	region	no
12-21-99	10:17 AM	Parker, Tresa	METROPIP	Michigan	108

recv'd billing from HHP dos 12/5-12/11/99 pd same.

date	time	entered by	office	region	no
12-14-99	09:43 AM	Parker, Tresa	METROPIP	Michigan	107

CSA---please issue drafts,record draft# on pay log, issue pay trans add payments filed under paid on pay trans.

date	time	entered by	office	region	no
12-01-99	08:59 AM	Parker, Tresa	METROPIP	Michigan	106

recv'd bill from Home Health dos 11/18-11/20/99 pd same

date	time	entered by	office	region	no
11-23-99	10:21 AM	Swagler, Linda	METROPIP	Michigan	105

scott.,called from wheelchair seating need home visit.,for repair $60.00 ok samed

AUTO
claim number
22-P024-956

ACTIVITY LOG

date	time	entered by	office	region	no
09-09-03	11:26 AM	Swagler, Linda S	METROECF	Michigan	664

Status Cal:
Names: Roger Dowidait, 29122 Hennepin, Garden City, MI 48135 dob 12/2/41,ss#374-42-1868 married to Kimberly. No longer employed Full P (no insurance to coordinate with) appropriate ded taken, uw notified.
Atty Rep: Carol Vlacho.,18555 Fort St., Riverview, MI
TPTD: 2,032,114.65 Authority: 2,200,000 Reserve:1,109,000
MCCA: current
UM/BI: n/a
Sub: n/a
Injury: Spinal Cord injury at C-6. Complete paralysis to his mid chest.,including his arms.,maxium assistance for ADl's upper extremities. Has some limited gross motor ability in lower extremities requires moderate assistance for transfers etc.,requires bowel/bladder program. Order current for 24 hr ac. Attendant care provided by his wife Kimberly and independent agency.
Causation: t-bone accident on drivers side.,Roger was driving DMV
Pre-existing: none
Unrelated: none
Current tx: Treats with PMR Dr Sally Young.,St Josephs she sees him for paralysis, skin breakdown, and chronis dysesthetic pain. He contines to require meds for same.
052: exhausted
054: exhausted
055: Rita Ingersol (as needed)
Supplies: urinary caths,underpads,gloves,wipes,creams,briefs
DME: hospital bed,walker, wc,transfer boards,shower chair
RX: Elavil,Neurontin,bactracin,hydrocortisone cream.
Unrelated rx: none
Vans: purchased completed 12/19/00 7 year/100,000
Home Mods: completed early 1996
Activity Since Last Cal:
Suit was filed 2/3/03 by insureds attorney for a increased rate of attendant care we currently pay Kimberly Dowidait $13.50 an hour for these services, which include assistance with Adl's assistance with catherization and feeding. Currently we also pay Tam Home Health Professionals as independents at negogiated rate of $22.00 an hour.

date	time	entered by	office	region	no
09-09-03	10:25 AM	Swagler, Linda S	METROECF	Michigan	663

Please note pending bills., set MMCA status task cal tx's

date	time	entered by	office	region	no
09-03-03	10:30 AM	Lumadue, Kathy	METROECF	Michigan	661

CSA - CCM in basket

Page No. ____

CLAIM ACTIVITY LOG

YEAR 96

Claim Number P024-956

Insured

Received Notice of Loss

MO./DAY	TIME	INITIALS	
10-22	cont		aggressive
			Dr Young has written & indicated that [illegible] continues to need help w/ADL's & needs an aide for eating, bathing & dressing. He cannot swim independently
			Called dr's office & spoke to Mary (the spinal cord nurse) She'll speak to dr & call CRB
	11:05		Mary called back & said
			2-4 hrs AC for bowel, bathing & dressing
			Cath takes about 15 min to do up to 8 hrs a day (about 2 more hrs)
			Called insd - spoke to Kim & discussed that dr says he only needs 4-6 hrs a day - not the 23 hrs getting. She'll discuss w/Roger & will have him CRB
			Discussed w/ Roger - aggressive tomorrow - attendant care is only 8 hrs per day @ $9.50 or $76 per day
			Since home mods are done - file can now be returned to Noah for CAT handling
			Routed to her (via cal date) after discussion
11-7		LS	Rec'd my file for CAT handling - Rec'd WL - payments w/ D. Flanney - To deduct SS payments @ 450/mth. - (for prior payments not reported) - MCCA dues Feb 97

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Page No. _____

CLAIM ACTIVITY LOG

Claim Number D024-95

YEAR 95

Insured _____

Received Notice of Loss _____

MO./DAY	TIME	INITIALS	
8-31	Cont		During that same conversation I agreed I would pay the Doctor for moving cost I also agreed to pay the outstanding bill at the house - while the Doctor will pay them at the apt
9-12		DF	Spoke to Kim Doctor - Roger work 24 hrs now. We agreed to 12 hrs per day $C30. We also discussed the pool - I advised that we'd need documentation indicating that ① access to the pool is medically nec. and ② why access is not nec. Kim also said that she'll need Roger more hrs initially to get in a 2nd bed at unit working, having them both sleep in the same room. Advised that he doesn't need to be in the same room, we can provide him a monitor (like a Fisher-Price model) so that he can call her during the night. I did agree to pay for a cordless phone. I also agreed to pay the $200 or so that she'll spend to help them move. I also agreed to pay the extra ½ hrs on a day that the aide doesn't show up. There are no RN's coming to do (only) bowel program. We agreed to $7.50 (instead of $C30) to include bowel prog.
9-19		DF	Roger was discharged on 8-20. He is currently in a foam space apt @ $895 per. Home modifications will hopefully be done by about Christmas... work hasn't actually started yet, we're still at the architect phase. Pd to date
10/5		MK	We have all requested briefs for home modifications.

CLAIM ACTIVITY LOG

Page No. _____

Claim Number V024-95C

YEAR 95

Insured _____

Received Notice of Loss _____

MO./DAY	TIME	INITIALS	
8-8 cont			about pool & bathe. Atty indicated that insd is not able to take a step or 2 when using a walker Left message for Insd to arrange the architect Atty will send a coq letter
8-9		DF	Intern Tonya rec'd a call from acts office - Insd wants the total loss covered by us. Insd also seems to think that we promised to buy them a car in about 6 mos. Van purchase has never been discussed & is not part of our terms. Based on the fact that insd is now able to walk a few steps - he may be able to transfer to a similar car. Again, its too soon to know
	11:25		called Sandy at acts office & advised of above
8-16		DF	spoke to Kim Crane at Park Place of N'Ville. Rogers rent will be $795 per month - since he moving in on 8-26 - 1st rent will be $1068.23. DH pay rent directly to insd & attny to ground to apt. DH pay the security deposit directly, so that it will come back to us Pd to date Jr Builder put in lowest bid & is beginning to arrange for mobile. Roger is scheduled for discharge on 8-26-95. Roger has gone home successfully for some days -- more are scheduled prior to discharge. By discharge, Roger is expected to be ambulating, but not w/in travel program. Kim shown to assist Roger in all areas except to travel program -

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stupid being related?
A Yeah.
Q Isn't it fraudulent for an adjustor to knowingly pay less?
A It could be. Yes, it could be. I agree.
Q From --
A It could be an honest mistake.
Q And it could be fraud?
A Could be fraud.
Q It's an intent component that separates the two, isn't it?
A I guess it could be fraud if that adjustor was taking that money and keeping it themselves.
Q Or they kept the money and thought they were helping the company out to benefit the company, either way, State Farm shouldn't benefit from the fraud of an employee, should they?
A They should not.
Q And they should not benefit from the stupidity of an employee, should they?
A No, they shouldn't.
Q And with respect to the room and board that we talked about earlier, if you were an ignorant or stupid or fraudulent employee of a company, and your insured didn't get benefits that they were

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entitled to, State Farm shouldn't benefit from that either, should they?
MR. ESTES: Calls for a legal conclusion.
THE WITNESS: We're assuming that room and board is a clear-cut item of damages in the No-Fault law?
Q (Continuing by Mr. McKenna) Sir, if it's not an element of damage under the No-Fault Act, the judge will tell the jury that, it won't be an issue. I'm telling you room and board has requirements under the No-Fault Act that at a minimum are going to be a question for a jury to decide in this case, at a minimum.
A Okay.
Q Okay. If you don't understand what room and board is, all I can do is ask you to assume it's a benefit just like wage loss, and you understand what that means?
A I'm not going to assume it's a benefit. It's a question for the jury to decide, then why should I assume it's a benefit?
MR. MCKENNA: You want to explain that to him, or do you want me to?
MR. ESTES: For purposes of

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his question you can assume that it's a benefit. We don't agree with him in terms of the way he characterizes it or the scope of it, but if he wants to ask you a question and say I want you to assume it's a benefit, you can answer the question based on that assumption.
THE WITNESS: Okay. Assuming that room and board is a benefit.
Q (Continuing by Mr. McKenna) Just like wage loss.
A Just like wage loss. What was the question?
Q You as a company, State Farm, should not benefit at your insured's detriment from an employee who was stupid, fraudulent, or made a mistake?
MR. ESTES: Calls for a legal conclusion.
THE WITNESS: If the party was entitled to the benefit it should be paid.
Q (Continuing by Mr. McKenna) And if they were entitled to the benefit you're going to owe interest on it?
A Yes.
Q Failure to pay an entitled -- otherwise entitled benefit is unreasonable?
A If that's determined by the jury, yes.
Q Well, no, I'm saying to you. If I said to you,

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Doug, I'm a new claim rep, if I fail to pay an otherwise entitled benefit, are they entitled to interest on it, what would say?
A What benefit are we talking about?
Q Any no-fault benefit that the person's entitled to. Any one of them.
A Such as wage loss?
Q I don't care. It could be a Band-aid. Anything that they're reasonably entitled to, if you don't pay it is unreasonable, correct?
A And you would owe interest?
Q And would you owe interest.
A Correct.
Q And if you've got documentation to support it, you know they're entitled to it and you still don't pay it, that's an unreasonable refusal to pay the benefit, correct?
A It sounds like it on the face of it, yes.
Q Does it sound like anything else?
A Well, again, we're dealing a lot with assumptions here.
Q It's a hypothetical question --
A Hypotheticals.
Q -- I can't ask you any differently.
You trained people to be

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A Again, I'm not familiar with room and board.
Q You've never --
A I don't have any claims that I pay room and board on.
Q You've never had an insured present a room and board claim to you?
A To me personally, no.
Q And you have never presented to an insured their right to pursue a room and board claim?
A No, I have not.
Q So going back to what you said about State Farm wouldn't allow that to happen because it would be reviewed, because the claim rep would review the file, and if we owed it we'd pay it, if State Farm keeps you, the claim rep in the dark as to a benefit such as room and board, you can't tell your insureds about it if you don't know about it, can you?

MR. ESTES: Objection.

THE WITNESS: It's a hypothetical question. I'd be speculating to answer that.

Q (Continuing by Mr. McKenna) It's not a hypothetical question.
A Yes, it is.

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Q State Farm hasn't taught you anything about room and board, have they? You've already told me that an hour ago.

MR. ESTES: It's two hours ago.

THE WITNESS: I have not been taught, no.

Q (Continuing by Mr. McKenna) Okay. So if you can't -- if you haven't been taught by State Farm and they're responsible to teach you about all of these benefits so you can tell your insureds about all the benefits, and how to make the claim, then you wouldn't be in a position to catch the nonpayment, would you?
A That would be my fault.
Q And whose fault is it that you didn't know, State Farm's?
A No, it would be my fault.
Q Okay. So how are you supposed to know about room and board benefits if State Farm didn't tell you about them?
A By reviewing the No-Fault Statute, the Michigan law.
Q Okay. So you're saying it's up to the adjustor themselves to go through and learn all of that,

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and that State Farm isn't going to teach you?
A I don't know. I've never had a claim to me. That would be to me, hypothetically, me.

MR. MCKENNA: I don't have anything else.

MR. ESTES: All set. Thank you.

* * *

(Deposition concluded at 4:40 p.m.)

right?
A Yes.
Q And State Farm if they're going to be like a good neighbor, which their old slogan used to be, has a claim rep stealing money from an insured by not paying them and the supervisor doesn't catch it, that's inappropriate, isn't it?
A That would not be fair.
Q It would be unreasonable, wouldn't it?
A In the context of only what you're telling me, yes.
Q And I'm not saying the supervisor committed fraud or the claims superintendent committed fraud, but if I were able to show you a situation where a claim rep wrote into a document, a letter, a note, I know this person is providing care at a level that's entitled to a certain dollar amount, I'm only going to pay this much lower dollar amount, and I mean it's a sizable difference, would that strike you as a claim that should be investigated by the special investigation unit of State Farm for fraud?
A No, that does not sound like that.
Q Why not? Who is going to investigate that? The claim supervisor apparently hasn't done anything

with it, now who is left to investigate?
A The claim supervisor and the claim representative would review the documents that are provided and if it was shown that we owed more than that that would be paid.
Q Okay. But they aren't paying more and they've already have admitted in their own writing, in their own documentation that they know more is owed, and they're not paying it?
A Then it should be paid.
Q Okay. If it's fraud for someone else to do that making the claim, why isn't it fraud for the claim rep, aren't they defrauding the insured out of money that they should be getting?
MR. ESTES: Calls for a legal conclusion.
THE WITNESS: They're providing an unfair service to that policyholder.
BY MR. MCKENNA:
Q Well, would you agree with me that providing an unfair service and asking for an unfair service are the same thing, one you're calling fraud and one you're not. I mean I'm asking State Farm to give me the service of a wage loss check when I wasn't in an accident, just pretend I was. What

am I asking for, I'm asking for an unfair service charge, aren't I?
A Yes, sir.
Q And that's fraud, right?
A Yes, sir.
Q And you're an educated woman with a four year degree from Michigan State University, and when you turn that around and you look at a State Farm employee doing the same thing, you can't call that what it is, isn't it the same thing?
MR. ESTES: Argumentative.
You're hypothetical's also been incomplete. I don't see how it's possible to be answered.
BY MR. MCKENNA:
Q Isn't that the same thing, ma'am, isn't that fraud?
A I don't know all the details of that situation.
Q Let's say I were to give you some detail that indicated for example that a family member is providing attendant care to an insured. The equivalent commercial company rate for that service is $53.00 to $62.00 an hour, okay?
A Okay.
Q You're paying the insured's family member $9.50?
A Okay.

Q Is that fraud?
A I don't know.
Q Is that reasonable?
A I don't know.
Q Why don't you know?
MR. ESTES: Argumentative.
MR. MCKENNA: It's not argumentative.
MR. ESTES: Sure, it is.
BY MR. MCKENNA:
Q Go ahead.
A I don't know the injury. I don't know the level of care. I don't know the market, what's reasonable and customary.
Q Ma'am, there's a note in this file in an activity log by an adjuster, a claims rep, it says, "The wife provides equivalent care to that of an LPN."
Now, if I tell you that the adjuster claim rep says that, obviously that claim rep knows what an LPN level care or should know what an LPN level care is if they're capable of handling these types of claims, correct?
A Okay.
Q Would you agree with that?
A Yes.

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THE WITNESS: I don't know.
BY MR. MCKENNA:
Q Well, you can't get enough overhead into the equation to warrant a change from $62.00 an hour to $9.50 an hour and say you're treating somebody fairly, can you?
A No, it appears to be unfair.
Q And unreasonable?
A And unreasonable.
Q I mean that's an indictment by the adjuster themselves in this record.
If you would have been this claim supervisor or claim superintendent and you saw that, what would you do?
MR. ESTES: Speculation.
THE WITNESS: I would review all the facts and go back and pay what we owed the policyholder.
BY MR. MCKENNA:
Q When you find somebody cheating an insured, you know you owe interest, don't you?
A I don't recall the specifics on the interest.
Q Well, in this case if you have to hire an attorney to find out these things and look at these documents, that shouldn't go away, that shouldn't

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go unpunished and unreimbursed, should it?
MR. ESTES: Objection, calls for a legal conclusion.
THE WITNESS: I don't understand your question.
BY MR. MCKENNA:
Q Shouldn't they be compensated for what this adjuster writes in here, so they know what they're rightfully entitled to?
MR. ESTES: Objection, calls for a legal conclusion.
BY MR. MCKENNA:
Q Shouldn't they get that money?
MR. ESTES: Same objection.
THE WITNESS: They should receive the benefits that they had coming to them.
BY MR. MCKENNA:
Q And when an adjuster claim rep does what you just said was unreasonable and unfair, you said if you found it you would go back and try to correct it?
A Correct.
Q And that means that if it had been going on for more than thirty days under the statute, you'd owe interest?
A I do not recall the specifics under the statute.

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Q Well, let me give you this as a hypothetical then.
Under the Michigan No-Fault Act it says that if reasonable proof has been submitted and a claim has been longer than thirty days, that there is a penalty interest of twelve percent simple interest, okay. If I'm wrong he will tell me I'm wrong, tell you I'm wrong.
I want you to assume that what I just explained to you occurred on this file happened more than thirty days ago, would you agree that in the context of when you find it, you would have to go back and calculate interest for the benefits that weren't paid?
A Yes, sir.
Q Okay. Would you agree that to the extent that the No-Fault Act says that an unreasonable refusal to pay a claim entitles the insured to attorney fees, you would have to advise your insured in this setting that there was a penalty provision for unreasonable refusal and that we owe attorney fees?
MR. ESTES: Calls for a legal conclusion as to whether they have to advise.
THE WITNESS: I'm just not qualified to answer that.

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BY MR. MCKENNA:
Q Ma'am, I gave you as hypothetical and he'll correct me if I'm wrong, that the No-Fault Act says that an unreasonable refusal to pay benefits entitles the insureds to an award of attorney fees, I'm not saying how much.
A Sure.
Q All I'm saying is that there is a claim for that.
If you caught this, it's more than thirty days, you're aware that that's a provision of the statute, you'd have to tell your insured we also owe attorney fees, we'll have to figure that part out?
MR. ESTES: Objection, calls for a legal conclusion.
BY MR. MCKENNA:
Q Go ahead.
A We would pay what we owe under the policy and the statute.
Q Would you -- go back to the same question.
Would you tell them that we recognize we're going to owe you attorney fees, we don't know what that amount is, but it's a benefit we're going to pay when we can agree on the amount?

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whether or not the insured gets the benefit?
MR. MCKENNA: Well, you know, you want to confuse my questions or confuse yourself, go ahead.
MR. MCKENNA: Ma'am, did you understand the question?
MR. ESTES: No, I have to understand the question before she answers.
MR. MCKENNA: I don't really care whether you understand it or not, the one that's important here is the Witness. And if I had a Judge here and you made that objection and the Judge said to the witness do you understand the question, he would tell you to sit down.
MR. ESTES: She's not going to answer the question until I understand it. I simply asked for clarification.
BY MR. MCKENNA:
Q Do you understand the question, ma'am?
A I don't even know what the question was now.
Q I asked you the question regarding a claim rep not knowing a benefit, not informing the insured. At a minimum you agreed that that would be an inappropriate way to handle a file?
A My opinion, yes.

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Q The next level up is a claims supervisor. If the claims supervisor was equally as ignorant as the claims rep, that would still be the level of inappropriate claim handling?
A Yes.
Q If we went the next level and the claims superintendent didn't know of that type of benefit to pass it along to the claims supervisor, to pass it along to the claims rep, that would still be at a minimum inappropriate claim handling?
A The bottom line is inappropriate claim handling, yes.
Q Now, would you agree with me that it would raise to the level of fraud the minute we were able to show that the claims superintendent was aware of that type of benefit but didn't inform the claims supervisor and didn't inform the claims rep and was allowing it to occur?
MR. ESTES: Calls for a legal conclusion.
THE WITNESS: Please restate the question.
BY MR. MCKENNA:
Q Sure.
We had talked earlier about

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fraud and this intent. And you said, well, you have to know what they were thinking if they were doing that on purpose, because not doing it on purpose could be just a mistake, right?
A Correct.
Q Okay. But when I read to you the note from an adjuster, I mean there's no question that adjuster knew what was going on, that claim rep knew what was going on about attendant care?
MR. ESTES: Well, speculation.
THE WITNESS: I'm speculating from what you're reading to me that they understood.
BY MR. MCKENNA:
Q Based on what you read in the file?
A What you said to me.
MR. ESTES: What you read?
THE WITNESS: Yes.
MR. MCKENNA: It's in the file. If I read it incorrectly I'm sure I'm going to hear about it.
MR. ESTES: You haven't identified the claim rep who wrote the note.
BY MR. MCKENNA:
Q The purpose of having a claims activity log is so

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that someone like yourself when you were a supervisor or superintendent could pick up a file and see what had happened on the file in the past and what was scheduled to occur in the future?
A Yes, sir.
Q And every one of the State Farm employees that are trained from claim rep up are trained to make documentation and notation in the claim activity log and in as clear and unambiguous fashion as possible, in other words so that anyone reading it wouldn't have to guess what did Doreen means. Doreen's going to write it in there and it should be clear for anyone what you meant?
A To the best of our ability, yes.
Q So when as I did read to you from what I'm telling you is a claim activity log, an adjuster says this person's providing LPN care, that's pretty clear and unambiguous, isn't it?
A Yes.
Q Now, back to the question I was asking you before. When you have people who just don't know, that's ignorance, right?
A That's your interpretation.
Q Well, I'll give you an example. When a child

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argumentative.
THE WITNESS: I don't think it would be cheating. I just think if it was something we didn't know or I can't know we owed and I wasn't paying, it's human error or it would be an error on my part.
BY MR. MCKENNA:
Q Well, to not go back and pay them once you figured out that they were owed that money for that type of benefit, that's cheating?
MR. ESTES: Still argumentative. Also calls for a legal conclusion as far as how far back you can go.
THE WITNESS: I don't necessarily agree it's cheating somebody.
BY MR. MCKENNA:
Q Do you know what the word fraud is or means?
A Yes.
Q State Farm has a fraud department, don't they?
A Yes.
Q If you as an adjuster suspected that some of your billings or the claims were fraudulent –
A Yes.
Q – you could turn it over to a fraud investigation unit?

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A Yes.
Q Right?
A Yes.
Q Does State Farm have a fraud investigation unit to discover fraud committed by adjusters?
A Not that I'm aware of.
Q Does State Farm have a fraud investigation unit to determine underpayment or nonpayment by adjusters?
A Not that I'm aware of.
Q But State Farm does have a department set-up for detection of overpayment or overclaiming by providers and insureds?
A Yes.
Q But it doesn't reciprocate on the insured's behalf as far as you know that if they're being cheated intentionally or unintentionally by an adjuster that they have the same amount of manpower trying to discover that as they do for overbillings, overpayments, correct?
MR. ESTES: Argumentative.
THE WITNESS: We have management people who are reviewing our files on a regular basis probably as often as we are. And our team managers management are reviewing them. So I'm sure they're looking for those types of

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things for errors committed by the adjusters or underpayments as well as overpayments.
BY MR. MCKENNA:
Q You've never had a manager tell you that there was room and board benefits that were owed that you can recall, correct?
A Not that I can recall, no.
Q So if State Farm has a policies from the top down in Illinois, and decided not to tell managers and supervisors about room and board, and tell them that they had to pay it, they wouldn't be able to pass it along to people like yourself, would they?
A I mean as I said I don't recall ever being told that. I can't speak for everybody. I've been out of PIP for about five years.
Q My question was, if management in Illinois didn't want to tell your managers, your supervisors and, therefore, people like yourself about the benefit, you wouldn't be able to tell your insureds about it, would you?
A I can't tell them something I'm not aware of, that's correct.
Q So the only way a manager could look at these files and catch nonpayment of room and board is if they knew about room and board?

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A Correct.
Q And if management knew about room and board and saw this file that since 1995 had no room or board benefit paid, they wouldn't be able to catch it, would they?
A Other than the one log note, I can't say what has been done on this file and what hasn't been done. I don't know.
Q You just told me when I asked you about looking at all the files to catch underpayment or nonpayment, that managers look at these files, right?
A Oh, I would imagine so, yes.
Q And my point is if since 1995 managers have been looking at these files and there's been no room and board benefits paid, the managers either didn't know about room and board benefits or allowed it to continue, correct?
MR. ESTES: Argumentative. She's speculating as to what has been done or what hasn't been done in terms of this particular file being reviewed, and you're trying to turn it around and make it a concrete statement. That's not what she said.
MR. MCKENNA: Is that form or foundation, Counsel?

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MR. ESTES: You heard the objection.
BY MR. MCKENNA:
Q Go ahead.
A And again my answer remains the same. I can't say what has been done on this file and what has not been done.
Q All right. Here's Exhibit 1. These are all of the activities logs that have been produced to me.
MR. ESTES: Excuse me, that's untrue, sir, that is absolutely untrue. This is the Exhibit that I produced at this point for Miss Lumadue's deposition.
You and I talked about this and I told you these were all the sheets with entries by Kathy Lumadue.
BY MR. MCKENNA:
Q Forgive me, computerized one. I haven't been given anything prior to the electronic activity log.
But if there's nothing in the activity logs since it's been computerized from a manager, supervisor, indicating they've reviewed the file and they see that room and board benefits haven't been paid, or that they want room and

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board benefits to be paid, there's nothing in there, and there's been no payment of room and board, that's an indication that the manager or supervisor that looked at it, don't know about room and board or if they do they didn't do anything about the nonpayment of it, correct?
A Again, you're asking me to speculate on what somebody else would have done or not have done or knew or didn't know, and I don't think I can answer that question. I don't know.
Q You acted as a manager at one time, a supervisor?
A Yes.
Q If you looked through a file and you knew room and board benefits were available and they haven't been paid, what would you do?
A I would talk to the adjuster.
Q Document the file?
A Yes.
Q If you didn't know about room and board benefits and you were doing your job reviewing files, you wouldn't put anything in there about it, would you?
A If I didn't know about it, no.
Q Okay. So there's with this file with nonpayment of room and board benefits, no discussion of room

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and board benefits with the insured, for that to occur and not be fraud by the adjuster, the adjuster would have to be able to say, as you have, I didn't know that they were entitled to those benefits?
MR. ESTES: Argumentative, foundation.
BY MR. MCKENNA:
Q Correct, correct?
A Again, I mean to speak for the adjuster, I don't think I could do that. I can say that I would assume the adjuster did not know about that. I don't know.
Q If you were the adjuster you would tell them about room and board benefits, correct?
A If I knew that we owed them, yes, I would.
Q And you were a supervisor manager on this case at one date?
A Correct.
Q You did your job as a supervisor manager on that date, didn't you?
A Yes, I guess so.
Q And as manager supervisor on that date if you knew about room and board, and you looked through this file and you saw that none had been paid, doing

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your job you would have made an entry that you wanted that adjuster, that case representative to start paying it, correct?
A Correct. I guess to further that answer to at least ask why had it not been paid up to then and have a discussion about that benefit.
Q Now, what do you do when you find out that you screwed up, you haven't paid a benefit that you now realize you owed all along, what do you do as the adjuster at State Farm?
MR. ESTES: Objection to the form, argumentative.
THE WITNESS: Personally what I would do is I would go to my team manager and discuss the oversight with my team manager or the error with my team manager.
BY MR. MCKENNA:
Q And then what would you do?
A I would discuss with her or him recognizing that error.
Q Recognizing an error on a claim paying money to an insured that you didn't pay, you owed them money, you didn't pay it, you made the mistake, you had an oversight, there was an error, whatever it is you want to call it, shouldn't you make them

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to, correct?
A. Correct.
Q. And if you were never advised of room and board benefits and Linda Swagler was never advised of room and board benefits but the law says they're entitled to them, then they should be able to go back to 1995 and collect them, shouldn't they?
MR. ESTES: Absolutely not. That's a legal conclusion. Why would you ask a question like that?
MR. MCKENNA: I just did. Your objection's noted.
MR. ESTES: No, my question to you, sir, is why would you ask a question that you know requires a legal opinion?
BY MR. MCKENNA:
Q. Go ahead.
A. I'm sorry, what was the question?
Q. You have already told me your position with respect to room and board. You were never advised of it that you can recall, correct?
A. Correct.
Q. I'm saying to you if you were on this file as manager supervisor and Linda Swagler was the claim rep and there's no indication in the file, no

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indication with my clients that they were ever advised of their entitlement to room and board benefits, if it was discovered that you didn't know and legally they were entitled to it by the policies and by the statute, they should be able to get those benefits going back to 1995, shouldn't they?
MR. ESTES: Objection, calls for a legal conclusion. The hypothetical is defective.
BY MR. MCKENNA:
Q. Go ahead.
A. I don't know.
Q. What part of that are you missing that you can't answer? Is there some confusion?
MR. ESTES: It's a legal opinion.
THE WITNESS: Right.
BY MR. MCKENNA:
Q. You make legal decisions every day as adjusters, don't you?
A. I don't necessarily make legal decisions.
Q. You make a decision interpreting a policies, interpreting a statute, deciding what's reasonable and necessary and related, don't you?

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A. I'm not handling PIP claims, so that's not the type of stuff I'm doing.
Q. You do that when you're handling PIP files, you did that when you were handling them, correct?
A. Correct.
Q. You did that as the supervisor the one day that your name came up in this log on this file it was a PIP file, correct?
A. It was a PIP file, yes.
Q. So as a supervisor you would be responsible for the legal interpretations of the statute and the policies as to what benefits were or were not paid on this file, at least that one day, correct?
A. Yes.
Q. All right. So what I'm saying to you is now, Patti, you didn't know about room and board. I want you to assume that Linda Swagler didn't deliberately cheat my client out of a benefit that she knew they were entitled to, that she's in the same position, I want you to assume that she didn't know more about room and board than you do.
A. Okay.
Q. When you discover that room and board is the type of benefit allowed under the Michigan No-Fault Act

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and that your insured was never informed of it, shouldn't they be entitled to go back to the beginning of the claim and be made whole?
MR. ESTES: Calls for a legal conclusion. Hypothetical is defective. That's at least the third time the question's been asked. She's already answered it twice, you've got the same answer. One more time and then that's it.
THE WITNESS: And I don't know.
BY MR. MCKENNA:
Q. Do you not know because you never interpreted a room and board claim, is that why you have difficulty with that question?
A. I've never -- yes, I've never run into a room and board claim.
Q. So if I told you hypothetically I want you to assume this fact, he can object to my hypothetical being incorrect. I tell you the room is purple, for the purpose of my hypothetical you have to assume it's purple. But what I want you to understand is all I'm saying to you is there is a form of benefit called room and board. If you didn't know about it, Linda didn't know about it

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A I have, yes.
Q Okay. And you understand that you're here under oath?
A Yes.
Q Regardless of your position with your employer and regardless of what it is you believe they want you to say or you feel they may want you to say, you have to answer questions truthfully. You understand that?
A Yes, I have done that.
Q And you understand that to feign not understanding a hypothetical would be tantamount to testifying falsely under oath?
A I just believe that your question --
Q Do you understand my question? To do that would be tantamount to testifying falsely under oath?
A To not understand the question?
Q To claim that you don't understand something when you do?
A Okay. I'm not claiming to understand or not understanding something.
Q Do you understand the penalty that would apply if that is what was going on here?
A Yes.
Q So if I ask you to assume for the purpose of my

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question that a benefit that you know exists such as parking or mileage to and from a doctor where it's necessary, where it's been paid by your insured, where they haven't been reimbursed, where you haven't told them about that type of benefit, and then later on you realize that that benefit exists, and that your client let's assume they paid $1,000.00 for parking, actually went out of their pocket, it was necessary, reasonable for every doctor's visit going back to the beginning of their claim, they're out-of-pocket a thousand dollars for a benefit you didn't know they were entitled to, would you recommend that they be reimbursed?
A Yes.
MR. ESTES: Hypothetical is still defective.
BY MR. MCKENNA:
Q Would it be reasonable under the No-Fault Act that they be paid for that?
MR. ESTES: Calls for a legal opinion.
THE WITNESS: If it's a benefit that is owed?
MR. MCKENNA: Yes.

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THE WITNESS: And it's documented to be with relation to the auto accident, yes.
BY MR. MCKENNA:
Q Reasonable, necessary, related to the accident they've incurred it, they've spent it, they needed to, okay. Is it reasonable under the No-Fault Act that they be paid for that?
MR. ESTES: Same objection.
THE WITNESS: As long it's related to the accident, yes.
BY MR. MCKENNA:
Q So I want to ask you a hypothetical question I asked you before we took the break.
There's a benefit called room and board. It's a charge for paying for the place where they live, paying for the food that they are eating, utility costs, things like that, that does exist under the Michigan No-Fault Act and case law.
You've indicated you weren't aware of it, correct?
A Correct.
Q I'm saying to you, it exists and it is as real as reimbursing for mileage and parking. Okay?

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A Okay.
Q Now, let's assume that there's a $1,000.00 room and board charge going back to the beginning of a claim. It's been reasonable, necessary, related, it's incurred for that time period, that's what is owed, but they never made the claim because you never told them about it. You now realize that they're entitled to it. Would you recommend that they be reimbursed?
MR. ESTES: Same objection to the hypothetical.
THE WITNESS: And I would recommend that, yes.
BY MR. MCKENNA:
Q So then the only thing left after you make the recommendation, you said your supervisor or someone says to you, well, I need you to be able to substantiate that it was incurred, what the charge was, what the time period was, et cetera, you would then go to your insured and ask them to provide whatever additional information you needed, correct?
A Correct.
Q If you as the adjuster don't know about that benefit that's owed, and your supervisor or

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manager does and they don't disclose it, they don't tell you about it, would that be fraud?
MR. ESTES: Objection, calls for a legal conclusion.
BY MR. MCKENNA:
Q Go ahead.
A In my opinion if they purposedly did not tell us that or withheld that, yes.
Q And in your opinion if they knew that it was owed, the law said it was owed, the case law was there and they didn't train you on it, other adjusters like yourself since 1985 and earlier, there were cases that said room and board was a benefit that was owed under circumstances like this case, would that be fraud?
MR. ESTES: Same objections.
THE WITNESS: If they purposedly withheld that information, again I believe that would be fraud by not telling us that.
BY MR. MCKENNA:
Q You wouldn't want to be part of a conspiracy to fraud your insureds, if you had that information you would tell them, correct?
A Absolutely.

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Q You rely on attorneys and management to advise you of changes in the law, don't you?
A Yes.
Q If the attorneys have advised management that room and board benefits were owing in No-Fault cases since at least 1985 since Manley, you want to have been informed of that, wouldn't you?
A Yes.
Q So to your recollection since 1985 and Manley, you've never been advised by anyone at State Farm to room and board benefits?
A In my recollection with my time in the company I have not.
Q And your recollection is you have never paid such a claim or advised people of their entitlement of such a claim?
A To my recollection, no, I have not.
Q And as I asked you earlier before we took the break and came back to this hypothetical, if you were handling PIP claims right now and you were a supervisor or a CR handling PIP claims, you'd leave this room and want to find out what I'm telling you whether it's the truth or not, wouldn't you?
A Yes.

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Q And if you found out what I'm telling you about this benefit room and board was true, would you write a memo to somebody at State Farm and ask them why they never told you that while you were a claim rep handling PIP?
MR. ESTES: Objection, relevance.
THE WITNESS: I would speak with somebody. I don't think I would write a memo, I'd prefer a face-to-face contact.
BY MR. MCKENNA:
Q Would you document the fact that you feel like you had cheated people because had you known about it you would have told your insureds of their entitlement to those benefits?
MR. ESTES: Relevance, argumentative.
THE WITNESS: And how do you mean, document in the file?
BY MR. MCKENNA:
Q Well, you can't document a file that you're not handling anymore, but you can put it in writing so that people later on wouldn't be able to deny that Patti brought this to our attention, couldn't you?
A I could do that, yes.

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Q You could write a letter to claims home office for Michigan, whoever the manager or regional manager is in charge and say, I'm a former claims representative of handling PIP, I just got done with a deposition and I heard about benefits I've never heard of, and when I checked into it I found out that my insureds were entitled to these benefits and I never knew about it.
You could document that in a letter and send it off, if what I'm telling you is true, correct?
A I could do that.
Q Would you?
MR. ESTES: Relevance.
THE WITNESS: I would probably talk with management people first, which I'm more comfortable doing.
BY MR. MCKENNA:
Q And what if they told you just forget about it?
MR. ESTES: Defective hypothetical, relevance.
BY MR. MCKENNA:
Q What if they told you they didn't want to make any noise about it, just leave it alone, don't do anything, would you?

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claims reps and team managers can send files to for investigation?
A. There's a Special Investigation Unit, yes.
Q. Is that what it's called Special Investigation Unit?
A. SIU.
Q. SIU. And do you know how many employees there are in SIU?
A. I don't.
Q. Do they have their own division, management, staff?
A. Yes.
Q. What division is it or what do you call the division where the adjusters, claims reps and team managers are investigated for dereliction of duty, failure to do what they're supposed to, what department investigates that?
A. I -- could you repeat the question?
Q. Sure.
What do you call the department that investigates adjusters, claim reps or team managers that have been derelict in their job duties or not doing their jobs correctly to the point that it affects claimants' rights and entitlement to receive money?

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A. There is no department for that.
Q. State Farm recognizes that insureds or doctors or claimants or service providers can cheat them out of money and they'll investigate that and they have a department for that.
But to your knowledge in the twenty-six years you've been with State Farm there is no corresponding organization or department within State Farm to catch adjusters, claims reps or team managers that are underpaying or not paying benefits to insureds?
A. There's no department. The team manager's responsible for their claim reps' performance and if there are performance issues, that should be addressed.
Q. So the claim manager's responsible for the screw-up of a claim rep -- a team manager is responsible for a claim rep screwing up?
A. A team manager is responsible for making sure that a claim rep knows their job and does their job appropriately.
Q. Well, would you consider it appropriate for a claim rep that you were supervising to intentionally underpay benefits?
A. Could you repeat that?

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Q. Would you consider it appropriate for a claim rep under your team to intentionally underpay or not pay benefits?
A. I would not consider that appropriate, no.
Q. Would you consider it appropriate for them from ignorance to underpay or not pay benefits?
A. No.
Q. Would you agree that you as the team manager are responsible for the ignorance of your claim reps?
A. If my claim reps have ignorance in certain areas, it would be my responsibility, yes.
Q. Okay. Now, would you agree that a family member is entitled to be compensated for services provided to an insured that are reasonable and necessary and related to the automobile accident?
A. Yes.
Q. Would you agree that it's the level and quality of the service and not who's providing the service that's relevant?
A. We have to take into consideration the level of care being provided, yes.
Q. So understanding the level and quality of care, in other words at what category they're providing that care, is the relevant determination as to the value of that service as opposed to who is

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providing the service, correct?
A. Yes. I would say for the most part, although I do believe you have to look at the person performing the service and whether or not they can perform it and are qualified to perform it.
Q. Well, whether they can perform it and are qualified to perform it is something that you would leave to a claim rep initially to determine, correct?
A. Yes.
Q. So if a claim rep were to indicate the person is qualified, capable and has been performing that level of service, then the next thing you would look to is what is that level of service worth, correct?
A. Correct.
Q. And in order to determine the level of service worth, you would take under the No-Fault Act and get an indication of the reasonable commercial market rates for that service, correct?
A. We would take a survey of the reasonable rates for that service, yes.
Q. You do get a range of value for that service, correct?
A. Yes.

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Q All right. And if you have a range for the value of service and you're looking at the service itself as to it being provided as being the relevant determining factor, once you have determined a range for the service being provided, whoever is providing the service should be compensated within that range, correct?
A Yes.
Q Regardless of who's providing the service, correct?
A Yes.
Q Now, failure to pay what you know to be the reasonable customary market rate to someone that you know is qualified and competent in providing the service, would be at a minimum inappropriate, wouldn't it?
A Yes.
Q It could be fraudulent as well, couldn't it?
A I would not agree it was fraudulent. I suppose it could be. It could be a mistake. It could be a lot of things.
Q Well, a mistake isn't fraud in the way you qualified it.
Does fraud to you mean where someone has done this but they've done it

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intentionally as opposed to out of ignorance?
A I think that's how I'm interpreting what you're saying, yes.
Q All right. So if you were to be handling a claim as a team manager and you looked at an incident where there was a nonpayment or underpayment, you would first want to determine whether that was done intentionally or not, correct?
A Certainly I would want to know if that was done intentionally.
Q And if it was done unintentionally and it was out of ignorance, it was a mistake and it should be corrected, correct?
A Yes.
Q If it was unintentionally, it's still not right and it still should be corrected, correct?
A Correct.
Q And if it happened to an insured, the insured should be compensated for that fraud or that mistake, correct?
A Correct.
Q So if a doctor sends in a bill and he says I did four procedures when he didn't do any, that could be fraud or it could be a mistake, correct?
A Correct.

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Q When you see it in the file and you know, you're convinced you know that it wasn't a mistake, that it's either happened in the past or you called them and they said, no, that's right we did four procedures, send us our money, when you're convinced of the level of intent to ask for something that they're not entitled to, is that when it becomes fraud for you?
A If they're asking for something that they know was not incurred, yes.
Q Now, would you agree that it would work the opposite way by failing to pay what you know that you owe and intentionally not paying it, that that is also fraud?
A I don't understand your question.
Q If you knew you owed me money. If I sold you a house, and I left for Florida and I left my $70,000.00 in equity with you. And I came back from Florida and I said to you, could I have my $70,000.00 back and you said what $70,000.00, I don't know what you're talking about, that would be fraud at a minimum, maybe a lot of other things but a minimum that would be fraud?
A Probably.
Q Now, if you were a claims rep and you knew that

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someone was entitled to money, and you deliberately intentionally didn't pay it, that would be fraud as well, wouldn't it?
MR. ESTES: Objection, that calls for a legal conclusion.
THE WITNESS: I don't think that falls within the definition of fraud, no.
BY MR. MCKENNA:
Q Well, if you know that you owe me something, my money for the sale of my house that I leave with you, when I come back and you don't give it to me that's fraud.
If you're a claim rep and you know you owe me an hourly rate for a benefit or a service and you deliberately don't pay it or you intentionally underpay it, why isn't that fraudulent as well?
MR. ESTES: That calls for a legal conclusion. Your definition of fraud is not any legal definition of fraud I've ever encountered. And you're asking this Witness to give you a legal conclusion. I object.
BY MR. MCKENNA:
Q Go ahead.
A No, I don't agree.

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Q I understood that. My question wasn't whether you agreed or not.
My question was why don't you agree? Explain to the Jury why it's fraud if I sell you a house and you keep my money and why it's not when a State Farm claim rep keeps money from an insured that they know that they are otherwise entitled to?
MR. ESTES: Same objection as before.
BY MR. MCKENNA:
Q Go ahead.
A I think that it's wrong, but I don't know that it's fraud.
Q Well, and we went through this before. When you add the component of intentionally not paying what they know they're supposed to, that would be fraud, wouldn't it?
MR. ESTES: Same objection.
THE WITNESS: I don't consider that fraud, I consider it wrong.
BY MR. MCKENNA:
Q Okay. Well, by definition of wrong, what kind of a wrong is it, is it a wrong of the fraudulent kind, wrong of a larcenous kind, is it stealing,

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is it robbing, I mean wrong has definition and consequence to it, correct?
A It's not doing what we should be doing.
MR. ESTES: Objection, compound question.
MR. MCKENNA: I'll withdraw the question.
BY MR. MCKENNA:
Q Wrong is asking State Farm to pay for four procedures I didn't perform and billing it, correct?
A That would be wrong, yes.
Q That's fraud, too, isn't it?
A It could be fraud, yes.
Q Wrong is keeping money that doesn't belong to you, correct?
A Yes.
Q That's fraud as well, keeping money that you know you're not entitled to?
MR. ESTES: Objection, calls for a legal conclusion.
BY MR. MCKENNA:
Q Correct?
A I don't know.
Q Well, you're a claims rep and a claims manager or

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team manager for twenty-six years with State Farm, you don't know fraud when you see it?
MR. ESTES: Objection, argumentative, calls for a legal conclusion, asked and answered.
BY MR. MCKENNA:
Q Go ahead.
A You're defining fraud and I don't agree with the definition.
Q I'm not trying to define fraud. You define fraud for me then, you tell me what fraud is as it relates to handling claims for State Farm?
A I think that the example that you gave of a doctor billing for services that clearly were not rendered and that we find out were not rendered and the bill was submitted intentionally to get money that was not owed, would be considered fraud.
Q Because there's a component of intent there, correct? That's important by your definition intent, correct?
A There's an intent to defraud, yes.
Q Okay. And in addition there is the element of money, financial gain, correct, someone is trying to get something they're not otherwise entitled

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to, correct?
A In that situation, yes.
Q Okay. Now, whether the person is trying to get something that they're not entitled to or keep something that they're not entitled to intentionally, should be irrelevant on the issue of fraud as it relates to claims handling, correct?
A In the way in which you have explained it, yes, I would agree.
Q For example, if the doctor got paid for four procedures and you believe that it was fraud and you asked for the money back and they said, no, they would be keeping what they would otherwise not be entitled to, correct?
A Yes.
Q That's still fraud, right? The nonpayment of what you owe is still fraud when you do it intentionally, correct?
A Yes.
Q And that would apply equally to a State Farm provider or insured or adjuster or claim rep, correct? Because I've asked you for your definition in the claims handling process with State Farm, that should apply across the board to

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everybody, shouldn't it?
A In the context that you're explaining it, yes.
Q Well, I didn't explain it, you did. You gave me what a claims manager, team manager's view with State Farm of what fraud is. And I asked you based on that whether you were taking it or keeping it, whether it should apply straight across the board to everybody involved in the claims handling process and you agree that it should, correct?
A In the context that you have explained it, yes.
Q But I didn't explain it, you did.
A I've answered the question.
Q Would you agree with me you've explained what the fraud is not me? I asked you a question --
A No, I think I agreed with your example of what fraud was, yes.
Q Fair enough. So we have an intent component, we have money involved and we have people either taking or not paying back what they're supposed to, correct?
A Yes.
Q Claims adjuster --
MR. ESTES: Do you need a break?

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THE WITNESS: I do.
MR. ESTES: Let's go off the record for now.
MR. RIFFENBURG: Off the record at 14:26:54.
(RECESS TAKEN)
MR. RIFFENBURG: Back on record at 14:33:33.
BY MR. MCKENNA:
Q Ma'am, we took a break. During the time period that we took a break, did you have any conversation with Mr. Estes about the content of this deposition?
A No.
Q When we broke we were just talking about fraud. Do you recall that?
A Yes.
Q Okay. In the context of a first party claim, do you know what attendant care is?
A Yes.
Q Now, we had also talked earlier, and I'm going to try not to go over the same things about it's the service and not the provider that's important, correct?
A Yes.

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Q And it's the level of the service to be compensated and not who's providing the service, correct?
A Yes.
Q And that level of service is based as you've indicated to do a survey and try to find out what the going commercial rate is for the service, correct?
A When you say "going commercial rate?"
Q A reasonable commercial rate for the service?
A We do a survey and determine what an agency would charge and what the employee would actually make.
Q And can you tell me what -- in the context of the answer you gave to the Jury earlier, that it's the service and not the provider that determines the rate of compensation?
A Correct.
Q You're not changing that answer in any way, are you?
A No.
Q So if Jane Smith lived next door and she was a high tech LPN and didn't have a job anywhere and she provided the service of a high tech LPN, we'd want to find out what that service was worth, wouldn't we?

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A Yes.
Q And if you called up ABC, XYZ and QRS Home Health Care and they gave you a range of say $55.00 to $62.00 an hour, that would be a pretty good indicator of what to pay Jane Smith?
A We typically make payments based on what the employee actually makes, not on what the agency charges. So, yes, those charges would be a reasonable rate.
Q You pay agencies what they charge, don't you?
A Yes.
Q You don't pay them less than what they charge?
A No.
Q So it's the value of the service and not who provided it that's important?
A Yes.
Q And if Jane Smith is self-employed as my next door neighbor providing home health care to my family member, you would pay what you would pay to XYZ or ABC or QRS Home Health Care Company, wouldn't you?
A No.
Q Why is Jane Smith not entitled to be compensated at the same rate as these other companies?
A Because ABC and XYZ and those other companies that you mentioned are charging for cost of doing

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oranges. You have an individual, a family member making a claim for a service that's being provided. The adjuster's going to check and see what agencies pay other people to work for them to provide that same service, correct?
A Yes.
Q And then they're going to put that down in the activity log, this is the range that I found for this service?
A Yes.
Q Okay. Now, would you agree with me that it would be fraudulent in the context of what we talked about earlier, for your adjuster, your claim rep, to intentionally pay $9.50 an hour for a service that they have determined would be worth $53.00 to $62.00 an hour?
A If it was intentional would it be fraudulent?
Again, I agree with the definition of fraud that we outlined before, and in that context, yes.
Q Have you seen Linda Swagler's log where she discussed the LPN duties?
A I believe I saw a log.
Q I'm sure Mr. Estes showed it to you after the last deposition, I'm sure it caught his attention.

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There's a log entry where it indicates -- and by the way I'm going to read this.
Linda Swagler was trained the same way or should have been trained the same way that you were, to make clear and concise statements in the record?
A I assume so.
Q That's the way all State Farm claims reps are supposed to do it, correct?
A Yes.
Q So when Linda Swagler makes a statement in here, these statements should be facts that she's already determined?
A If she's stating facts then, yes.
Q Well, I mean, for example, Linda Swagler should understand what an LPN is, given her job?
A Yes.
Q She should understand what an LPN's duties are, correct?
A I would think so, yes.
Q Being a claim rep she should see what gets paid to LPNs for doing LPN work and have an understanding of the range without even doing a survey, but she should have an idea?

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A She should have an idea of the range?
Q Yes, for payments for those type of services?
A She might have that knowledge. I don't know.
Q Well, if she didn't and she wrote down that the commercial companies for that run in a range and she puts it in there, that would be an indication to you and anyone at State Farm looking at this that she did her job and got the range, correct?
A I would make that assumption, yes.
Q All right, fair enough. So when she says the wife provides care equivalent to that of an LPN, that's telling you that she's aware of what the wife provides, correct?
A It's telling me that's her interpretation of what the wife provides, yes.
Q She's telling you that to her, I mean that's a fact statement to her, she's aware of what the wife does, and she's says that care is equivalent to that of and LPN.
That's a statement of fact that you as a team manager would rely on, correct?
A Yes.
Q And she'd have to know what the wife was doing to say that, she would have to know what an LPN's duties were, correct?

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A In order to make that statement, I would assume she would have to know that, yes.
Q She goes on to indicate "The duties include the following which are different from HHA," which would be a home health aide, correct?
A Yes.
Q "They include wound care, one person transfers, transfers using Hoyer lift, bowel programs, insert of catheters and that she's been trained in the same and doing the same since MVA."
That would be motor vehicle accident, correct?
A Yes.
Q All right. So that statement in an activity log by a claims rep to anybody like yourself coming along afterwards, leaves a pretty clear and concise statement, doesn't it, as to what the wife is doing that she's competent, she's qualified, she's trained, and she's been doing this since the date of the motor vehicle accident. Would you agree with that?
A Would I agree that it's accurate?
Q Yes. That you would read this and you would read this to state the wife is trained, she's qualified, she's doing these things and she's been

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Q Is that right or wrong to do what this log entry says was done?
A It would be wrong.
MR. ESTES: Objection to form, legal conclusion.
BY MR. MCKENNA:
Q And if we go back to what we talked about before as fraud, it meets the definition again of fraud, doesn't it?
MR. ESTES: Objection, legal conclusion.
BY MR. MCKENNA:
Q Go ahead.
A As we have defined it before, yes.
Q And is that the type of activity that State Farm wants its insureds to receive --
A No.
Q -- on a file?
A No.
Q Now, having seen that on this file today for the first time and being questioned by me about it for the first time and being the team manager on this file, wouldn't you want to treat Mrs. Dowadait like a good neighbor and investigate that more?
MR. ESTES: Objection to form.

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THE WITNESS: I would want to know what the log meant, yes.
MR. MCKENNA: That's not what I asked you.
BY MR. MCKENNA:
Q If you read this for the way it appears, Mrs. Dowadait got cheated out of money, the difference between $62.00 an hour and $9.50 an hour, correct?
MR. ESTES: Calls for a legal conclusion. Objection.
THE WITNESS: If you read it the way it is written, you might interpret it that way.
BY MR. MCKENNA:
Q Well, I did read it that way and I asked you if you read it that way and you agreed with me that's what it says, correct?
A Yes.
Q So she got cheated out of the difference between $62.00 an hour and $9.50 an hour.
Wouldn't you want to in fairness to her go back and do some checking on that and reimburse the family for the money they were cheated out of?

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MR. ESTES: Objection to form and calls for a legal conclusion.
THE WITNESS: I would want to go back and investigate whether or not that log is true and then determine whether or not there was anything owed to the insured, yes.
BY MR. MCKENNA:
Q Does State Farm have false logs?
A No.
As I indicated I believe there may have been some typographical errors in that log.
Q Typographical error would be $9.50 an hour to $13.50 an hour as you believed, correct?
A I don't know the amounts.
Q Correct?
A That's one figure that I recall.
Q That's what you said you believed, correct?
A It is what I said, correct.
Q She's still being cheated out of a lot of money from $62.00 an hour to even $13.50 an hour, isn't she?
MR. ESTES: Calls for a legal conclusion, form.
BY MR. MCKENNA:

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Q Based on that note?
A I would want -- based on that note, I would go to my claim representative and say, what does this mean and why are we paying this amount if, in fact, that's what were paying and you've documented something else.
Q Well, let me do it a different way.
Obviously the $53.00 to $62.00 an hour isn't a typo based on what you recall. This appears -- twice she said she's checked with commercial companies. She mentionsd commercially hourly rates for high tech LPNs, and then puts in this range.
That range of $53.00 to $62.00 an hour you have no reason to disbelieve is a typo, correct?
A No.
Q Is that correct?
A Yes.
Q All right. Now, would you agree with me regardless of what it was she paid, we know it says here $9.50, you think maybe $13.50, would you agree with me everything that we have talked about today so far, that if she paid anything less than that $62.00 an hour, Mrs. Dowadait would be

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The first thing that we asked for were any and all records, documents or materials relating to claims for attendant care benefits provided to your husband including but not limited to records or market surveys with regard to health care hourly rates. Market surveys meaning something that shows what attendant care people were being paid. Do you have anything that would meet that requirement, that request rather?
A. No.
Q. The second request was any and all documents relating to the level of care, amount of payment and hours of care provided to your husband from the date of loss to the commencement of this lawsuit. Do you have any records that would meet that request?
A. No.
Q. The third was any and all names and addresses of the person or persons providing any attendant care to your husband from the date of loss to the convention of the pending lawsuit. I know you've mentioned a couple of services, Allen and I forget what the last one was, Tam, and the names of the two other individuals, Tino and Lena, and I'm sorry, was it Freda that you mentioned?
A. Felicia.
Q. I'm sorry, Felicia. Any other -- any records that

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would expand upon that list of names of providers?
A. No.
Q. Number four is any and all documents you intend to rely upon at the time of trial with regard to your husband's claim for no fault benefits arising out of this May 12, 1995 accident or the injuries or aggravation of any pre-existing injuries, anything that might have been made worse by this accident. Did you bring anything in response to that request?
A. No.
Q. And lastly was any and all other documents you tend to rely upon in support of your claims advanced in this lawsuit, anything that you have in the way of paper documents or computer documents that you think supports your claim for benefits in this lawsuit. Did you bring anything like that with you today?
A. No.
MR. ESTES: Counsel, I would assume you have some documents maybe?
MR. MCKENNA: You keep making all these assumptions.
MR. ESTES: If I could finish, please. Perhaps my assumption is incorrect. I thought you might. I think my understanding of the rules are that if you have documents that are in response to this

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attachment to the deposition today even though they may not be in the physical possession of your client, you would also be obliged to produce those documents for the deposition today. I'm going to ask you have you done so or are you going to do so?
MR. MCKENNA: Am I under oath here? I don't know why you think you're taking my dep. I can't wait to take your adjusters. I hope you're there.
MR. ESTES: I just asked you a question, sir.
MR. MCKENNA: We've given you -- do you see it -- what we have.
MR. ESTES: In other words, nothing?
MR. MCKENNA: You want your file back, you can have your file back.
MR. ESTES: Your answer is nothing then, you're not producing anything?
MR. MCKENNA: I'm not under oath. If she finds something later on, we'll supplement. I don't know why everything's got to be so difficult for you. Maybe that's why Paul sent you.
BY MR. ESTES:
Q. The original hourly rate that you were receiving for the care you provided, you discussed that with

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Ms. Flannery?
A. Yes.
Q. And was there a discussion with her in terms of how many hours a day you would be providing as opposed to somebody else?
A. Yes.
Q. And as part of that, the hourly rate was discussed?
A. Yes.
Q. And you agreed to the rate that she proposed?
A. No.
Q. You told her no, you're not going to accept the rate?
A. No, I was told by her that that's the rate that I was entitled to as a family member and eight hours day.
Q. And you questioned that?
A. Yes.
Q. Was there a new furnace installed in your house after your husband was injured?
A. Yes.
Q. And was that part of the add on that was done, the addition?
A. Yes.
Q. It had to have its own separate furnace?
A. Yes.
Q. It wasn't tied to the existing system?
A. Correct.

Q. And have you been given a reason why that was not paid?
A. I think she told me her time schedule was different than mine or something. It didn't make any sense.
Q. During that last -- when you say the last month, you mean the last month he was alive?
A. Yes.
Q. Wasn't he hospitalized a good portion of that last month?
A. Some of it, yeah.
Q. This last statement that you presented, were you asking for attendant care for days that he was hospitalized?
A. No.
Q. Just days when he was home from the hospital?
A. I think my attorneys asked me to ask for all of that. And then when I spoke with Linda Swagler, then I had to break down my hours, if I remember right.
Q. When you say all of that, I'm not sure what you meant.
A. My attorneys told me to go ahead and ask for the hours that he was in the hospital since I was there providing care for him even though he was in the hospital.
Q. So with the exception of this last month that you were not paid for, if I understand you correctly, all of

the attendant care benefits that your husband needed during the eight, eight and a half years that he was injured were paid, and the dispute on those is really as to the rate of pay that you received?
A. Yes.
Q. When your hours dropped back to about nine per day, what shift are you covering?
A. 2:00 to 11:00.
Q. 2:00 in the afternoon to 11:00 at night?
A. Yes.
Q. What time of the day would your husband normally go to sleep?
A. All different times. Sometimes he didn't.
(Off the record at 12:22 p.m.)
(Back on the record at 12:41 p.m.)
BY MR. ESTES:
Q. We were talking about the rate of attendant care benefits, your rate, and you said you were at $6.50 and went up to $9.50 an hour?
A. $7.50.
Q. I'm sorry, $7.50 and $9.50 an hour. Other than -- sometime during the three years that Allen/Heartland was working for your husband, you believe they were making somewhere between $15.00 and $16.00 an hour?
A. Yes.

Q. And other than them, you're not able to tell me what rate any of the other services were getting?
A. I'm not sure. Lena and Tino might have been getting like $9.00, but that's as well as I can remember.
Q. I appreciate that you can tell me now what you remember. Do you think you knew at one time what Lena and Tino were making?
A. Yes.
Q. And you're telling me that now $9.00 an hour kind of sticks in your head?
A. Yes.
MR. MCKENNA: But you don't know for sure?
THE WITNESS: No.
BY MR. ESTES:
Q. Did you ever ask State Farm to increase your rate?
A. Yes.
Q. And when do you first recall asking them to increase your rate?
A. Right after I started taking care of Roger, shortly after.
Q. So when you start, was it a case of they offered you $7.50 an hour and then shortly thereafter you asked for an increase?
A. No, they just told me that's what I was getting paid as a family member.

Q. I guess that's what I meant by offered. They said the rate was $7.50. And how long a period of time before you asked for an increase?
A. It was only a short period.
Q. I'm sorry, I'm just trying to get an idea what you mean by a short period.
A. Probably within the first month or so.
Q. And did you propose a number that you thought it should be, or did you just ask them to increase it?
A. I just asked to increase it.
Q. And what was the response to that?
A. That all I was entitled to was the $7.50 an hour that I was getting.
Q. And who was it that told you that you were only entitled to $7.50 an hour?
A. Dorenda Flannery.
Q. Did she tell you how and why that was the number?
A. No, she just said as a family member that's all I was entitled to receive.
Q. So that would have been probably, what, August or September of '95?
A. Probably September.
Q. Did you ask for an increase again later on?
A. Yes.
Q. When do you next recall asking for an increase?

you stay in the $8.00 to $12.00 an hour?
A I stayed within the $8.00 to $12.00 an hour.
Q Why did you do that?
A Because that's how we were advised -- you know, that was the range that we were advised to use.
Q Now, did you understand or what was your understanding of the Michigan Supreme Court, Court of Appeals Case Law as it relates to the payment of attendant care and what rates to use?
A Well, once I became more knowledgeable, obviously, in the PIP arena and started understanding these cases, my opinion was that if a family member was trained in care of an individual, that there is case law to allow us to pay commercial rates.
Q What does a commercial rate mean?
A The same rate you would be paying a company if you hired them.
Q Have you heard the term market rates?
A Yes.
Q And market rates and commercial rates do they mean the same thing as it relates to payment of PIP benefits?
A They do to me, yes.
Q Were you aware that the law required State Farm

to pay these commercial rates to family members when you first started?
MR. JOHNSON: Same objections to the extent you're mischaracterizing the law in the State of Michigan.
You can continue.
THE WITNESS: When I first started in PIP, again I wasn't that knowledgeable of cases and things of that nature, but once I in a couple years I did come to the realization that we did owe higher rates.
BY MR. McKENNA:
Q When you realized that you owed the higher rates you still didn't pay them?
A Well, again that was my -- I was told that I was misreading the case law. I was not reading it clearly, but I did not feel that was the case. I felt that they were clear. And having a personal situation that I deal with on a daily basis that I know nobody's trained better than me.
Q What do you mean by a personal situation?
A I have a child with twenty-four hour needs.
Q Who was it that told you you were misinterpreting case law?
A I remember having a conversation with Stacey

Sherek. She was the section manager at one time relative to room and board.
Q Can you spell that?
A S-h-e-r-e-k last name.
Q S-h-e-r-e-k?
A Right.
MR. JOHNSON: Did you say Stacey?
THE WITNESS: Yes.
MR. JOHNSON: Do you know if there's an e in that?
THE WITNESS: I think so, yes.
BY MR. McKENNA:
Q S-h-e-r-e-k?
A S-h-e-r-e-k.
Q The conversation you had with her was about a room and board benefit?
A That's correct.
Q Was the conversation that your interpretation of what to pay was too high or what was the conversation?
A I felt we owed room and board to people who would otherwise be institutionalized or in, you know, residential living environments, but for family members to take care of them and put them into

their home or even come into their home and take care of them, that I thought case law clearly dictated that we owed room and board to these families at these levels of injury that I was handling.
And she said that, no, I wasn't interpreting that correctly, we don't owe room and board.
Q Are you familiar with the case Manley versus ACIA?
A Yes.
Q Are you familiar with the case Reed versus Citizens?
A Yes.
Q Are those two of the cases that you were referring to when you said the case law you felt stated differently than Miss Sherek did?
A I believe that those were the cases we were discussing at the time.
Q And was it your understanding that under those cases if a person was injured arising out of the use, operation or maintenance of a motor vehicle and they would otherwise be institutionalized, but for a family member taking them in, that room and board benefits were owed?

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A That was my interpretation, yes.
Q And it's your testimony that this Stacey Sherek -- strike that.
Had you actually see these cases, read them?
A I did, yes.
Q Did you point out to her that that's what it said in the cases?
A I pointed out to her exactly what I just said to you.
Q And she told you you're reading it wrong?
A Correct.
Q On this case that we're here about today, you were a claims representative, correct?
A Correct.
Q This discussion that you had with Stacey Sherek, did this occur before you started working on the Dowadait file?
A No, I was already working on the Dowadait you file.
Q At the time you had this conversation, were room and board benefits being paid to the Dowadaits?
A No.
Q At any time while you were handling this file, did room and board benefits get paid to the

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Dowadaits?
A No.
Q You were aware of the nature and the extent of Mr. Dowadait's injuries, correct?
A Absolutely, yes.
Q Mr. Dowadait was classified as a quadriplegic?
A Yes.
Q And there's a specific type of classification for him, do you recall what that was?
A I believe he was around C6, C7, mid chest down. I believe it was complete. I'm not sure if he had some motion in his hand and his arms. There might have been some incomplete in the upper body, but I don't recall exactly.
Q This hub that was set-up, was it set-up to handle spinal cord and brain injuries, catastrophic claims?
A Yes.
Q That was the purpose as you were told of its creation?
A No, no. It was all claims, just minor injuries to catastrophic claims.
Q Was there a special compartment within this hub that dealt with catastrophic claims or did all of the adjusters at Livonia handle them?

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A There was a catastrophic claims adjuster assigned to every team.
Q Were you a catastrophic claims adjuster?
A Yes.
Q So would only catastrophic claims adjusters handle catastrophic claims?
A Well, we had other claims in our inventory, but for the most part it was catastrophic.
Q I might have said that wrong.
What I want to know is if you are a catastrophic claims adjuster, would you be given the catastrophic claims to handle as opposed to a non-catastrophic claims adjuster?
A Yes.
Q You may have other files that you handle as well, but you would be given the catastrophic claims file for your team?
A That's correct.
Q This file for Mr. Dowadait you took over from an adjuster Dorina Flannery?
A That's correct.
Q Did you know Miss Flannery?
A Yes, I did.
Q Was she a catastrophic claims adjuster as well?
A I believe for a short period of time before I

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actually handled PIP she was, her and Norah Cimaglia.
Q Who?
A Norah, N-o-r-a-h, Cimaglia, C-i-m-a-g-l-i-a.
MR. JOHNSON: The first name again?
THE WITNESS: Norah.
BY MR. McKENNA:
Q She was also a catastrophic claims adjuster?
A Yes, she was.
Q Now, as a catastrophic claims adjuster you'd be handling claims that would get reported to the Michigan Catastrophic Claims Facility?
A That's correct.
Q You'd have to do reports to them?
A That's correct.
Q Would you do those reports monthly, quarterly, annually, biannually?
A I believe reimbursements were quarterly, status reports were every six months.
Q So once you got to a certain dollar amount on the claim, the catastrophic claims fund would reimburse State Farm?
A That's correct.
Q But you had to do reporting to the Catastrophic

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MR. JOHNSON: Thanks.
BY MR. McKENNA:
Q And the initials DF, which I believe to be Dorina Flannery, which we haven't taken her deposition yet, it says that, "Roger's rent will be 895 per month." And this was for his staying in a facility while his home was being modified.
If State Farm was paying 895 a month for rent in 1995 for Roger's condition, what would you classify that benefit as?
A Room and board.
Q Now, the term room and board, room I can understand. What is board? What did State Farm consider -- let me ask you this way.
What did State Farm consider the benefit as you've described it room and board to include?
A I don't know what the company's definition was. My definition would have been rent or mortgage payment and utilities and other things that the injured party had to pay.
Q Now, Roger was being paid 895 or his apartment was getting paid 895 at a time when he also owned a home; is that correct?
A That's correct.

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Q At that point in time was the home being modified?
A I believe so. I wasn't handling it at that time, but I believe that is what was going on.
Q Did you ever review the activity logs when you took the file over to see the history of the file?
A I'm sure I did. I don't recall at this point.
Q Now, if the rent was being paid at 895 a month, State Farm would have under your view of the benefits owed, have also been responsibility to pay food?
A If he had twenty-four hour care, yes.
Q Well, Roger -- strike that.
Were you aware of whether or not Roger needed twenty-four hour care in 1995?
A Roger always needed twenty-four hour care.
Q If he needed twenty-four hour care was he entitled to be paid for food as a room and board benefit?
MR. JOHNSON: Same objection. You're asking for a legal opinion.
BY MR. McKENNA:
Q Go ahead.
A In my opinion, yes.

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Q According to the records all they paid was 895 for rent. They would have owed for food and according to your understanding utilities which would include what, gas, electric, phone?
A Well, whatever wasn't paid obviously by the complex.
Q If it wasn't part of the rent and it was a utility that was gas, electric, phone, water, whatever, those benefits also should have been pay?
MR. JOHNSON: Same objection and also you're leading the Witness.
BY MR. McKENNA:
Q Is that correct?
A Correct.
MR. McKENNA: Counsel, I don't need to state it for now, but this is your employee.
MR. JOHNSON: No, she's not.
MR. MCKENNA: She was at the time. I would consider her to be hostile. I would ask that the Court consider her to be a hostile witness.
MR. JOHNSON: My objection is on the record. I don't think you're entitled to

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lead this Witness.
BY MR. McKENNA:
Q Did somebody at State Farm tell you not to pay room and board benefits to the Dowadaits?
A I don't recall that, no.
Q Did anyone from State Farm tell you to pay room and board benefits to the Dowadaits?
A No.
Q Did you have a supervisor that would review your files?
A Yes.
Q You were aware at the time you were handling this file, that Mr. and Mrs. Dowadait were entitled to room and board benefits?
A Yes.
Q Yet you didn't pay them?
A That's correct.
Q State Farm didn't order you to pay them?
A No.
Q And you don't recall whether anyone at State Farm told you not to pay them?
A That's correct.
Q You do recall having a conversation about that time period though with Stacey Sherek?
A Sherek.

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Q Sherek?
A Yes.
Q Anyway, about that time you had a conversation with Stacey Sherek where she told you with respect to your view of attendant care that you were interpreting it wrongly?
A Correct.
MR. JOHNSON: Same objection. You're leading the Witness.
MR. McKENNA: It's foundational.
THE WITNESS: That's correct.
BY MR. McKENNA:
Q At that point in time were you discussing with her the Dowadait file or any file in particular or was this a general discussion?
A I believe it was general based on a lot of files that I had that I was starting to see situations where room and board would probably be payable.
Q In addition to room and board benefits, the attendant care benefits for an individual like Mr. Dowadait are classified by the number of hours per day that they need assistance, correct?
A Number of hours and level of care.
Q Now, what was the number of hours that you

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determined Roger Dowadait was entitled to for attendant care?
A I believe it was twenty-four hours a day.
Q And at what level of care did you determine him to need the twenty-four hour care?
A I believe as I got to understand more of his condition and what was going on, a high tech to an LPN level because he did need invasive procedures.
Q High tech to LPN refers to the level of nursing care?
A That's correct.
Q Would you agree -- there's other deps that I've taken of other adjusters on this file, that as an adjuster, claims representative, I'm sorry, it's not who's providing the care but the level of care being provided that's relevant?
A I believe so, yes.
Q So if the care being provided by a family member, the level of care they're providing determines the rate --
A Yes.
Q -- of compensation?
A That's correct.
Q You would determine the rate of compensation in a

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commercial market analysis by contacting several providers within the area and see what they were charging?
A That's correct.
Q While you were handling the Dowadait file, did you determine the rates of compensation or were they already determined for you?
A Those were already determined.
Q The rates that Mrs. Dowadait -- strike that.
The rates that the Dowadait family was being paid for the level of care that he was getting, was it above or below the commercial market rates?
MR. JOHNSON: I don't think you've laid a proper foundation for the question.
BY MR. McKENNA:
Q Go ahead.
A Below.
Q And how was it that you were able to know that they were below market rates?
A Well, I still had in my possession my prevailing price survey that I did that I would use. Plus I also had a folder on my desk that was compiled of case managers forwarding prevailing price surveys that they used. So I had a multitude of

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documents available to me to review.
Q Miss Swagler, you were paying a rate that was determined by someone else's compensation for attendant care, correct?
A That's correct.
Q When you were paying that rate you were aware of the commercial market rates in the area, correct?
A Correct.
Q You never -- strike that.
You were aware of the rates that you were paying were below the commercial market rates at the time you were paying them?
A Yes.
Q There was no oversight, there was no mistake, it was your intention to pay and continue to pay at below market rate?
A Right.
Q Why?
A Well, I was reporting on the file, and I believe I did state in some of the logs what the current rates should be and I was not advised by management to raise those rates.
Q So you were advising your superiors that you were aware of the commercial market rates and that you were paying it below that commercial market rate

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and they never told you to pay higher?
A Correct.
Q And again, from the standpoint of who you would have been reporting to would that have been a team manager?
A That's correct.
Q Then the team manager would be overseen by a section manager, correct?
A That's correct.
Q So if a section manager or a team manager wanted to audit the Dowadait file, they could look in there and see where you've indicated in your logs you were paying below market rates that you were aware existed?
A They would have seen the file, because any time you needed authority it would go to your team manager and then to your section manager.
Q Is it your testimony today that this is the management above you at State Farm while you were handling this file wouldn't allow you to pay the prevailing rate or the commercial market rate?
A They did not give me permission to pay it.
Q As a result of that, what other alternative was there for you other than documenting that fact in your logs?

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A What was that? I did go to -- on this file I did go to Norha Cimaglia, who was the original catastrophic claims handler, and then she became and injury claim trainer. And there was some -- we were told that when we feel that we have questions or we want to talk about rates or what we're paying, to talk to these injury claim trainers because they were nurses.

And there was some bitterness between Norha and the Dowadaits at the time because of the home modifications, which were done by her husband. So I never really got a real positive response from her regarding Roger and Kim. There seemed to be some problems and personal issues that were going on with the house and her husband.
Q Norha Cimaglia you mentioned her name earlier?
A Right.
Q She's a nurse?
A That's correct. She's retired now from the company.
Q Was she part of your hub --
A Yes, she was.
Q -- your committee to study rates?
A No, I don't believe she was on that committee.

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Q I'm sorry. Let me just take a second. I'm trying to find where I wrote her name down in my notes.

I'm sorry. Earlier you told me she was also a catastrophic claims adjuster?
A That's correct.
Q That would have been in the past, correct?
A Correct.
Q Now, as a nurse you would go to her and she would have, what, input on rates?
A Yes.
Q So is she one of the people you would have went to about what rates you were paying Roger Dowadait and his family?
A Yes, I did go to her, yeah.
Q Do you have specific recollection of talking to her about the market rates, commercial market rates being higher than what you were paying?
A Yes.
Q And what did she tell you?
A Well, she wasn't real fond on the Dowadaits, Roger and Kim, because of the home modification situation with her husband, because the Dowadaits were constantly complaining about the modifications and what they were having leaking

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problems with the home. So she just felt after, you know, her original handling of this and what we were paying that it was sufficient.
Q She told you not to pay any more?
A Right.
Q Now, I'm a little confused. In approximately '95 according to the notes that I have, in fact I had mentioned one of them earlier, Mr. and Mrs. Dowadait were in an apartment while their home was being modified.

You just said that Norha Cimaglia's husband was doing the modifications for the home?
A Yes.
Q How is it that Mr. Cimaglia was doing home modifications for State Farm for Mr. Dowadait?
A Norha Cimaglia was a catastrophic claims adjuster early on, and her and Dorina Flannery, and this was common knowledge, Norha would start the catastrophic claim. When it came to the time of home modifications, the file was switched over to Dorina Flannery.

There were bids given on the home modifications, probably two or three and one was always John Cimaglia Building Company. And

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Cimaglia Building would do the home mods. And then once they were completed, the file was reassigned to Norha.

Q Let me make sure I understand this correctly. If a file comes into the Livonia hub, with a catastrophically injured person who needs home modifications, Dorina Flannery would get bids for this work?

A The file would be assigned to Norha, this was early on when we were doing this. The file would be assigned to Norah. When the home modification issue came up, the file would be reassigned to Dorina.

Q Why would that happen?

A Because one of the bids she was going to get was from Cimaglia Building.

Q So you're saying that Norha Cimaglia would transfer the handling of a file that needed home modifications to Dorina to handle?

A The home modification portion.

Q When the home modification portion was completed, Dorina would then transfer the file back to Norha?

A Correct.

Q And did Dorina Flannery know that John Cimaglia

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was Norah's husband?

A Oh, yeah. They were best friends those two.

Q Did anyone else at State Farm know that State Farm's employees were transferring files around so that their spouses could do home modifications?

A Everyone knew.

Q And you're saying part of this anonymous, this tension between Norha and the Dowadaits, was because the Dowadaits were unhappy with the type of work done?

A Yes. Roger used to call me all the time. In fact, I was out there two or three times because the bathroom was leaking, there were some problems, a lot of problems elements.

Q So if Roger were to complain about the type of work being done or that had been done on his home, his complaints would be a personal affront to Norah's husband, in other words it would be an attach against --

MR. JOHNSON: Again I'm going to object. I have a couple of them this time. A, again you're leading the Witness. B, this discussion has no relevance to the issues involved in this lawsuit, as

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interesting as it might be, but you can go ahead.

MR. McKENNA: That's a great thought, but from my standpoint fraud and how my client got treated is very relevant.

MR. JOHNSON: My objections are on the record, you can continue you.

BY MR. McKENNA:

Q Was it your understanding that if the Dowadaits made a complaint about the workmanship, that their complaint would be directed at Norah's husband?

MR. JOHNSON: Same objection, you're leading the Witness.

THE WITNESS: That's true, because I did take some complaints directly to Norha, because I was at a lost for how to remedy the situation because Roger was so upset. And I had had to go out there a couple of times to try to see what we could do to remedy the leaking problems and things like that.

BY MR. McKENNA:

Q Did you ever tell my clients that their former adjuster -- strike that. Did you ever inform the Dowadaits that Norah's husband -- let me try it

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one more time. Did you ever inform the Dowadaits that the contractor that performed the repairs on their home was married to a State Farm catastrophic claim adjuster?

A They knew that, Roger told me.

Q How did he find that out?

A He told me -- when we first started talking about the house he was very mad about it. He said he didn't -- he thought there was a conflict. He didn't really want this guy. He was just, you know. He knew when I first started taking over the file that this is what happened.

Q When this -- I don't know what to call this. When this arrangement was going on with Dorina Flannery and Norha, were the adjusters hiring the contractors?

A I don't know procedurally what occurred there, who signed the contract, I just know that. I just know there were bids taken.

Q Let me ask you a different way. Were the adjusters and claims representatives soliciting the bids?

A Yes.

Q So Dorina Flannery would contact John Cimaglia

Michigan Supreme Court
Lansing, Michigan

Opinion

FILED JUNE 14, 2005

PHYLLIS L. GRIFFITH, Legal Guardian for DOUGLAS W. GRIFFITH, a Legally Incapacitated Adult,

Plaintiff-Appellee,

v

No. 122286

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellant.

BEFORE THE ENTIRE BENCH

CORRIGAN, J.

In this case, we consider whether the no-fault act, MCL 500.3101 *et seq.*, requires defendant, a no-fault insurer, to reimburse plaintiff for her incapacitated husband's food expenses. Because the food in this case is neither "for accidental bodily injury" under MCL 500.3105(1) nor "for an injured person's care, recovery, or rehabilitation" under MCL 500.3107(1)(a), we hold that the expenses for it may not be recovered under those provisions

of the no-fault act. We thus reverse the judgment of the Court of Appeals.

I. UNDERLYING FACTS AND PROCEDURAL HISTORY

On April 28, 1994, plaintiff's sixty-three-year-old husband, Douglas Griffith,[1] suffered a severe brain injury as a result of a motor vehicle accident. He received treatment at in-patient facilities and hospitals until August 1995, at which time he was transferred to a residence where he received twenty-four-hour nursing and attendant care. On August 6, 1997, Griffith returned home with plaintiff. He remains confined to a wheelchair and continues to require assistance with basic daily tasks such as eating and bathing.

After the accident, defendant provided coverage as Griffith's no-fault insurer. Until the time that Griffith returned home, the expenses that defendant covered included food expenses. After Griffith returned home, defendant denied plaintiff's claim for Griffith's food expenses, and plaintiff sued to recoup those expenses.[2] The trial court ruled that Griffith's food costs are an "allowable expense"

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[1] This opinion references Douglas Griffith as "Griffith" and Phyllis Griffith as "plaintiff."

[2] Plaintiff's complaint included claims for items other than Griffith's food, but those claims are not at issue in this appeal.

under MCL 500.3107(1)(a) of the no-fault act and ordered defendant to pay a per diem food charge.

The Court of Appeals affirmed.[3] The Court relied on *Reed v Citizens Ins Co of America*, 198 Mich App 443; 499 NW2d 22 (1993), which held that a person receiving at-home care is entitled to room and board costs under MCL 500.3107(1)(a) to the same extent that such costs would constitute an allowable expense if the injured person received the same care in an institutional setting. Thus, the panel concluded that, under *Reed*, Griffith's food costs are an "allowable expense" under MCL 500.3107(1)(a).

Defendant filed an application for leave to appeal to this Court, which this Court denied.[4] Thereafter, this Court granted defendant's motion for reconsideration and granted leave to appeal.[5]

II. STANDARD OF REVIEW

This case requires us to determine whether an injured person's food costs constitute an "allowable expense" under MCL 500.3107(1)(a). Issues of statutory interpretation are

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[3] Unpublished opinion per curiam of the Court of Appeals, issued August 16, 2002 (Docket No. 232517).

[4] 468 Mich 946 (2003).

[5] 469 Mich 1020 (2004).

questions of law that this Court reviews de novo. *Jenkins v Patel*, 471 Mich 158, 162; 684 NW2d 346 (2004).

III. PRINCIPLES OF STATUTORY INTERPRETATION

When interpreting a statute, we must ascertain the legislative intent that may reasonably be inferred from the statutory language itself. *Sotelo v Grant Twp*, 470 Mich 95, 100; 680 NW2d 381 (2004). When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). Because the role of the judiciary is to interpret rather than write the law, courts lack authority to venture beyond a statute's unambiguous text. *Id.* Further, we accord undefined statutory terms their plain and ordinary meanings and may consult dictionary definitions in such situations. *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004).

IV. ANALYSIS

A. Statutory Language and Legal Background

MCL 500.3105(1) provides:

> Under personal protection insurance an insurer is liable to pay benefits *for accidental bodily injury* arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter. [Emphasis added.]

According to the plain language of MCL 500.3105(1), a no-fault insurer is only required to pay benefits "for accidental bodily injury" arising out of an automobile accident. The no-fault act *further* restricts a no-fault insurer's liability by defining the limited types of benefits that are payable "for accidental bodily injury . . . ." MCL 500.3107(1)(a), the statutory provision at the center of this case, states:

> Except as provided in subsection (2), personal protection insurance benefits are payable for the following:
>
> (a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations *for an injured person's care, recovery, or rehabilitation*. [Emphasis added.]

Thus, in addition to the requirement under MCL 500.3105(1) that benefits be "for accidental bodily injury," MCL 500.3107(1)(a) circumscribes benefits to those expenses consisting only of items or services that are reasonably necessary "for an injured person's care, recovery, or rehabilitation."

Both this Court and the Court of Appeals have interpreted and applied the above statutes in cases involving claims for food or "room and board" expenses. In *Manley v Detroit Automobile Inter-Ins Exchange*, 127 Mich App 444, 448; 339 NW2d 205 (1983), rev'd 425 Mich 140 (1986), the plaintiffs' minor son suffered severe head

trauma in an automobile accident. He resided with the plaintiffs and received care from nurse's aides. *Id.* at 449. The plaintiffs sued the defendant no-fault carrier, seeking, among other things, reimbursement for his room and board costs. *Id.* at 448-449. The defendant insurance carrier argued that because the plaintiffs already had a legal duty to care for their child, room and board costs were not compensable. *Id.* at 451. The Court of Appeals rejected this argument, largely on the basis of a worker's compensation case that distinguished between "ordinary household tasks" such as cleaning and washing clothes and nonordinary tasks such as "'[s]erving meals in bed and bathing, dressing, and escorting a disabled person . . . .'" *Id.* at 452, quoting *Kushay v Sexton Dairy Co*, 394 Mich 69; 228 NW2d 205 (1975).

The panel concluded that the distinction between ordinary and nonordinary tasks could be reconciled with the language of MCL 500.3107(a), which then provided that "products, services, and accommodations not reasonably necessary for the injured person's care, recovery, or rehabilitation are not 'allowable expenses.'" 127 Mich App at 453. The Court reasoned:

> The necessity for the performance of ordinary household tasks has nothing to do with the injured person's care, recovery, or rehabilitation; such tasks must be performed whether or not anyone is injured.

> This reasoning supports a generalization concerning the circumstances in which a product, service, or accommodation can fall within the definition of "allowable expense." *Products, services, or accommodations which are as necessary for an uninjured person as for an injured person are not "allowable expenses."* [*Id.* at 453-454 (emphasis added).]

The panel then opined that food "is as necessary for an uninjured person as for an injured person" and thus would not ordinarily constitute an "allowable expense" under MCL 500.3107 for an injured person cared for at home. 127 Mich App at 454.

When *Manley* was appealed to this Court, we effectively vacated the Court of Appeals room and board analysis. *Manley v Detroit Automobile Inter-Ins Exchange*, 425 Mich 140; 388 NW2d 216 (1986). We stated that the "question whether food, shelter, utilities, clothing, and other such maintenance expenses are an allowable expense when the injured person is cared for at home" had neither been raised before the trial court nor argued in the Court of Appeals. *Id.* at 152. Accordingly, this Court declined to address the issue and stated that the Court of Appeals analysis of the issue "shall not be regarded as of precedential force or effect." *Id.* at 153.

Justice Boyle issued a concurring and dissenting opinion, asserting that the room and board issue was properly before this Court because the Court of Appeals had

raised it sua sponte and discussed the issue in its opinion. *Id.* at 168 (Boyle, J., concurring in part and dissenting in part). She could find "no principled basis" for distinguishing between food provided in an institutional setting and food provided at home, and concluded that the Court of Appeals "injured person vs. uninjured person" test was not only "unwieldy and unworkable" but that it effectively punished those who choose to care for injured family members at home. *Id.* at 168-169. Justice Boyle opined that MCL 500.3107 imposes three requirements for "allowable expenses": "1) the charge must be reasonable, 2) the expense must be reasonably necessary, and 3) the expense must be incurred." 425 Mich at 169.

Thereafter, in *Reed*, the Court of Appeals adopted Justice Boyle's *Manley* analysis. The insured in *Reed* had been severely injured in an auto accident. *Reed, supra* at 445. The plaintiff, the insured's mother, filed various claims against the defendant insurer and moved to amend her complaint to include a claim for room and board expenses. *Id.* at 445-446. The trial court denied the motion on the basis that such expenses were not recoverable under the no-fault act. *Id.* at 446.

The Court of Appeals reversed, reasoning as follows:

> We see no compelling reason not to afford the same compensation under the act to family members who provide room and board. Subsection 1(a) does not distinguish between accommodations provided by family members and accommodations provided by institutions, and we decline to read such a distinction into the act. Moreover, holding that accommodations provided by family members is [sic] an "allowable expense" is in accord with the policy of this state. Denying compensation for family-provided accommodations while allowing compensation in an institutional setting would discourage home care that is generally, we believe, less costly than institutional care. Irrespective of cost considerations, it can be stated without hesitation that home care is more personal than that given in a clinical setting. . . .
>
> *We hold that, where an injured person is unable to care for himself and would be institutionalized were a family member not willing to provide home care, a no-fault insurer is liable to pay the cost of maintenance in the home.* [*Id.* at 452-453 (citations omitted; emphasis added).]

In addition to the above reasoning, the Court of Appeals relied on the notion that because the no-fault act is remedial in nature, it "must be liberally construed in favor of persons intended to benefit thereby." *Id.* at 451.

B. Interpretation of Statutory Language and Application

As previously stated, MCL 500.3105(1) and MCL 500.3107(1)(a) impose two separate and distinct requirements for "care, recovery, or rehabilitation" expenses to be compensable under the no-fault act. First, such expenses must be "*for accidental bodily injury* arising out of the ownership, operation, maintenance or use of a

motor vehicle . . . ." MCL 500.3105(1) (emphasis added). Second, these expenses must be "reasonably necessary . . . for an injured person's care, recovery, or rehabilitation." MCL 500.3107(1)(a).

Defendant contends that MCL 500.3105(1) requires that allowable expenses be causally connected to a person's injury. We agree. In fact, MCL 500.3105(1) imposes two causation requirements for no-fault benefits.

First, an insurer is liable only if benefits are "*for* accidental bodily injury . . . ." "[F]or" implies a causal connection.[6] "[A]ccidental bodily injury" therefore triggers an insurer's liability and defines the scope of that liability. Accordingly, a no-fault insurer is liable to pay benefits only to the extent that the claimed benefits are causally connected to the accidental bodily injury arising out of an automobile accident.

Second, an insurer is liable to pay benefits for accidental bodily injury only if those injuries "aris[e] out of" or are caused by "the ownership, operation,

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[6] *Random House Webster's College Dictionary* (1997) defines "for," when used as a preposition, as "with the object or purpose of," "intended to belong to or be used in connection with," or "suiting the purposes or needs of." The definition offered by Justice Kelly—"'by reason of'"—also implies a causal connection. See *post* at 5. (Citation omitted.)

maintenance or use of a motor vehicle . . . ." It is not any bodily injury that triggers an insurer's liability under the no-fault act. Rather, it is only those injuries that are caused by the insured's use of a motor vehicle.

In this case, it is uncontested that the insured's injuries arose out of his use of an automobile. Therefore, to the extent that the insured's injuries stem from an automobile accident, application of the second causal element noted above does not bar plaintiff's claim.

The first causal element, however, poses a problem for plaintiff. Plaintiff does not claim that her husband's diet is different from that of an uninjured person, that his food expenses are part of his treatment plan, or that these costs are related in any way to his injuries. She claims instead that Griffith's insurer is liable for ordinary, everyday food expenses. As such, plaintiff has not established that these expenses are "for accidental bodily injury . . . ."[7]

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[7] Our dissenting colleagues fail to explain how they avoid the causation requirement in MCL 500.3105(1). As we will explain, because plaintiff is not on a special diet, his food expenses are not "for accidental bodily injury," and those expenses therefore are not recoverable in this case. It is therefore not surprising that our dissenting colleagues avoid developing their analysis of MCL 500.3105(1), because their position is plainly inconsistent with the unambiguous language of that provision.

Even if ordinary food expenses were compensable under § 3105, an insurer would be liable for those expenses only if they were also "allowable expenses" under MCL 500.3107(1)(a). This section provides that benefits are payable for "reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." In other words, an insurer is liable only for the cost of "products, services and accommodations" "reasonably necessary" "for an injured person's care, recovery, or rehabilitation."[8]

There is no dispute that Griffith is an "injured person." Thus, the question is whether food is reasonably necessary for his "care, recovery, or rehabilitation" as an injured person. It is not contended here that the food expenses at issue are a part of the insured's "recovery" or "rehabilitation." Indeed, plaintiff does not allege that the food has special curative properties that might advance Griffith's recovery or rehabilitation. The key issue,

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[8] In her concurring and dissenting opinion in *Manley*, Justice Boyle read MCL 500.3107(1)(a) as imposing only three requirements: "1) the charge must be reasonable, 2) the expense must be reasonably necessary, and 3) the expense must be incurred." 425 Mich at 169 (Boyle, J., concurring in part and dissenting in part). In addition to these requirements, however, the statute states that an "allowable expense" must be "for" one of the following: (1) an injured person's care, (2) his recovery, or (3) his rehabilitation.

therefore, is whether the food expenses are necessary for Griffith's "care."

Because "care" can have several meanings depending on the context in which it is used, the doctrine of *noscitur a sociis* is helpful in discerning the meaning of that term in this statute. This doctrine is premised on the notion that "the meaning of statutory language, plain or not, depends on context." *King v St Vincent's Hosp*, 502 US 215, 221; 112 S Ct 570; 116 L Ed 2d 578 (1991).[9] Thus, under the doctrine of *noscitur a sociis*, "'"a word or phrase is given meaning by its context or setting."'" *Koontz, supra* at 318 (citations omitted). As a general matter, "words and clauses will not be divorced from those which precede and those which follow." *Sanchick v State Bd of Optometry*, 342 Mich 555, 559; 70 NW2d 757 (1955). When construing a series of terms such as "care, recovery, or rehabilitation," we are guided by the principle "that words grouped in a list should be given related meaning." *Third Nat'l Bank in Nashville v Impac Ltd, Inc*, 432 US 312, 322; 97 S Ct 2307; 53 L Ed 2d 368 (1977).

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[9] See *Koontz, supra* at 318, quoting *Brown v Genesee Co Bd of Comm'rs (After Remand)*, 464 Mich 430, 437; 628 NW2d 471 (2001), quoting *Tyler v Livonia Schools*, 459 Mich 382, 390-391; 590 NW2d 560 (1999) ("'Contextual understanding of statutes is generally grounded in the doctrine of *noscitur a sociis*: "[i]t is known from its associates," see Black's Law Dictionary (6th ed), p 1060.'").

Generally, "care" means "protection; charge," and "to make provision." *Random House Webster's College Dictionary* (2001). Thus, taken in isolation, the word "care" can be broadly construed to encompass *anything* that is reasonably necessary to the provision of a person's protection or charge. But we have consistently held that "[c]ourts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). Therefore, we must neither read "care" so broadly as to render nugatory "recovery and rehabilitation" nor construe "care" so narrowly that the term is mere surplusage.[10] "Care" must have a meaning that is related to, but distinct from, "recovery and rehabilitation."[11]

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[10] Our dissenting colleagues make the former error, construing "care" so broadly that "recovery and rehabilitation" are mere surplusage. If "care" means, as Justice Kelly contends, "'the provision of what is necessary for the welfare and protection of someone,'" *post* at 8, then "recovery and rehabilitation"—both of which are certainly necessary for an injured person's welfare—are stripped of any meaning.

[11] See Sutherland Statutory Construction (6th ed, 2000 rev), § 47.16, pp 265-267 ("[W]hen two or more words are grouped together, and ordinarily have a similar meaning, but are not equally comprehensive, the general word will be limited and qualified by the special word."

As an initial matter, it is important to note that the statute does not require compensation for any item that is reasonably necessary to a person's care in general. Instead, the statute specifically limits compensation to charges for products or services that are reasonably necessary "for an *injured person's* care, recovery, or rehabilitation." (Emphasis added.) This context suggests that "care" must be related to the insured's injuries.

This conclusion is supported by the fact that the statute lists "care" together with "recovery" and "rehabilitation." "Recovery" is defined as "restoration or return to any former and better condition, esp. to health from sickness, injury, addiction, etc." *Random House Webster's College Dictionary* (2001). "Rehabilitate" is defined as "to restore or bring to a condition of good health, ability to work, or productive activity." *Id.* Both terms refer to restoring an injured person to the condition he was in before sustaining his injuries. Consequently, expenses for "recovery" or "rehabilitation" are costs expended in order to bring an insured to a condition of health or ability sufficient to resume his preinjury life. Because "recovery" and "rehabilitation" are necessary only when an insured has been injured, both terms refer to products, services, and accommodations that

are necessary *because of* injuries sustained through the use of a motor vehicle.

"Care" must have a meaning that is broader than "recovery" and "rehabilitation" but is not so broad as to render those terms nugatory. As noted above, both "recovery" and "rehabilitation" refer to an underlying injury; likewise, the statute as a whole applies only to an "injured person." It follows that the Legislature intended to limit the scope of the term "care" to expenses for those products, services, or accommodations whose provision is necessitated by the injury sustained in the motor vehicle accident.[12] "Care" is broader than "recovery" and "rehabilitation" because it may encompass expenses for products, services, and accommodations that are necessary because of the accident but that may not restore a person to his preinjury state.

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[12] For instance, the cost associated with setting a broken leg would be compensable under the term "recovery" because it is necessary to return a person to his post-injury health, and the cost of learning to walk on a prosthetic leg would be recoverable under the term "rehabilitation" because it is necessary to bring the person back to a condition of productive activity. Similarly, the cost of such items as a prosthetic leg or special shoes would be recoverable under the term "care," even though the person will never recover or be rehabilitated from the injuries, because the cost associated with such products or accommodations stems from the injury.

Griffith's food costs here are not related to his "care, recovery, or rehabilitation." There has been no evidence introduced that he now requires different food than he did before sustaining his injuries as part of his treatment plan. While such expenses are no doubt necessary for his *survival*, they are not necessary for his recovery or rehabilitation from the injuries suffered in the accident, nor are they necessary for his care because of the injuries he sustained in the accident. Unlike prescription medications or nursing care, the food that Griffith consumes is simply an ordinary means of sustenance rather than a treatment for his "care, recovery, or rehabilitation." In fact, if Griffith had never sustained, or were to fully recover from, his injuries, his dietary needs would be no different than they are now. We conclude, therefore, that his food costs are completely unrelated to his "care, recovery, or rehabilitation" and are not "allowable expenses" under MCL 500.3107(1)(a).[13]

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[13] Our dissenting colleagues do not pay sufficient regard to the context in which the word "care" is used in MCL 500.3107(1)(a). They do not give effect to the Legislature's choice to use the term "care" in conjunction with the terms "recovery" and "rehabilitation." They also fail to give effect to the statute's specific reference to "*an injured person's* care, recovery, or rehabilitation." As we have explained, this contextual background aids our effort to discern the meaning of the term "care" as used in the statute.

Footnotes continued on following page.

The parties focus on the distinction between food costs for hospital food and food costs for an insured

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Our dissenting colleagues would instead read the word "care" in a vacuum, thereby allowing them to impose their preferred meaning without attempting to discern the context in which the Legislature used the term. Our dissenting colleagues' failure to read the word "care" in context renders the word devoid of any definitional limit. Let there be no mistake—the implication of their interpretation is that *any expense* that is necessary for a person's general "care" is recoverable, *regardless of whether that expense bears any causal relationship* to an "accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle . . . ." MCL 500.3105(1). Because they would allow a plaintiff to recover expenses for normal, everyday food consumed at home that does not differ from what an uninjured person would eat, would they also allow recovery of housing costs and expenses for clothing and toiletries, where those expenses do not bear any causal relationship to an accidental bodily injury? Justice Kelly seems to concede that she would require no-fault insurers to pay for an injured person's "shelter" where that expense bears no causal relation to the injuries. *Post* at 15.

It thus appears that Justice Kelly would essentially invent a new entitlement system by converting our no-fault law into a general welfare scheme. Her new scheme would pay all expenses of everyday life, such as mortgage payments and grocery bills, for anyone who has been injured in a motor vehicle accident, *even where those expenses do not arise from injuries sustained in the accident*. Justice Kelly does not explain how she would pay for her newly minted entitlement plan, but the effect of her position would be to force Michigan citizens to make these general welfare payments through increased mandatory insurance premiums. Perhaps Justice Kelly sincerely believes that our state's citizens should bear this new financial burden, but such a policy choice belongs to the legislative branch of our government. In deciding the case before us, we must honor the intent of the Legislature as reflected in the current language of the no-fault act by applying the causation requirement embodied in the provisions at issue.

receiving at-home care. Plaintiff contends that there is no distinction between such costs. We disagree.

Food costs in an institutional setting are "benefits for accidental bodily injury" and are "reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." That is, it is "reasonably necessary" for an insured to consume hospital food during in-patient treatment given the limited dining options available. Although an injured person would need to consume food regardless of his injuries, he would not need to eat *that particular food* or bear the cost associated with it. Thus, hospital food is analogous to a type of special diet or select diet necessary for an injured person's recovery. Because an insured in an institutional setting is required to eat "hospital food," such food costs are necessary for an insured's "care, recovery, or rehabilitation" while in such a setting. Once an injured person leaves the institutional setting, however, he may resume eating a normal diet just as he would have had he not suffered any injury and is no longer required to bear the costs of hospital food, which are part of the unqualified unit cost of hospital treatment.[14]

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[14] Our dissenting colleagues opine that the language of the no-fault act does not distinguish between food expenses

Footnotes continued on following page.

This reasoning can be taken a step further when considering the costs of items such as an injured person's clothing, toiletries, and even housing costs. Under plaintiff's reasoning, because a hospital provided Griffith with clothing while he was institutionalized, defendant

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incurred in a hospital and food expenses at home. As we have explained, however, we believe this distinction arises from the language in MCL 500.3105(1) and MCL 500.3107(1)(a). Food expenses in an institutional setting are "benefits for accidental bodily injury," and are "reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation," given the limited dining options available in hospitals. After all, an injured person is required to eat *hospital food* precisely because his injuries require treatment in a hospital. By contrast, a person who eats a normal diet at home does not incur food expenses that meet the requirements of MCL 500.3105(1) and MCL 500.3107(1)(a).

Justice Kelly also asks whether the majority is implying that hospital food expenses would be reimbursable under MCL 500.3107(1)(a), but not under MCL 500.3105(1). We have stated clearly, however, that food costs in an institutional setting are "benefits for accidental bodily injury" and are "reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." See p 19 of this opinion. In other words, we have quoted the language from *both* statutory provisions in saying that such expenses are recoverable.

Finally, Justice Kelly expresses concerns about allowing recovery for food expenses in a hospital but not at home. It is the prerogative of the Legislature, however, to determine whether the no-fault act should be amended to allow recovery of food costs that are unrelated to an accidental bodily injury, taking into account policy concerns such as those expressed by Justice Kelly and competing considerations such as the increased costs of premiums for this mandatory form of insurance coverage. This Court lacks both the institutional capacity to weigh the competing policy considerations and the constitutional authority to amend the no-fault act.

should continue to pay for Griffith's clothing after he is released. The same can be said of Griffith's toiletry necessities and housing costs. While Griffith was institutionalized, defendant paid his housing costs. Should defendant therefore be obligated to pay Griffith's housing payment now that he has been released when Griffith's housing needs have not been affected by his injuries?

Under plaintiff's reasoning, nothing would prevent no-fault insurers from being obligated to pay for any expenses that an injured person would otherwise be provided in an institutional setting as long as they are remotely related to the person's general care. Plaintiff's interpretation of MCL 500.3107(1)(a) stretches the language of the act too far and, incidentally, would largely obliterate cost containment for this mandatory coverage. We have always been cognizant of this potential problem[15] when interpreting the no-fault act, and we are no less so today.

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[15] See, e.g., *Shavers v Attorney General*, 402 Mich 554, 607-611; 267 NW2d 72 (1978) ("In choosing to make no-fault insurance compulsory for all motorists, the Legislature has made the registration and operation of a motor vehicle inexorably dependent on whether no-fault insurance is available at fair and equitable rates."); *Cruz v State Farm Mut Automobile Ins Co*, 466 Mich 588, 597; 648 NW2d 591 (2002) (recognizing that, because no-fault coverage is mandatory, the Legislature has continually sought to make it more affordable); *Celina Mut Ins Co v Lake States Ins*

Footnotes continued on following page.

Moreover, in seeking reimbursement for food and other such quotidian expenses, plaintiff is essentially seeking a wage-loss benefit. Reimbursement for the value of lost wages, however, is specifically addressed elsewhere in the no-fault act. See MCL 500.3107(1)(b).[16] See also *Popma v Auto Club Ins Ass'n*, 446 Mich 460, 463, 471; 521 NW2d 831 (1994). Plaintiff's construction of § 3107(1)(a) is strongly undermined by the Legislature's express provision for, and limitation on, wage-loss benefits in § 3107(1)(b).

Under MCL 500.3105 and MCL 500.3107(1)(a), defendant is not required to reimburse plaintiff for the food expenses at issue in this case. Such expenses are not necessary "for accidental bodily injury" under MCL 500.3105. In addition, they are not "allowable expenses"

Co, 452 Mich 84, 89; 549 NW2d 834 (1996) ("the no-fault insurance system . . . is designed to provide victims with assured, adequate, and prompt reparations *at the lowest cost to both the individuals and the no-fault system*" [emphasis added]); *O'Donnell v State Farm Mut Ins Co*, 404 Mich 524, 547; 273 NW2d 829 (1979) (recognizing that the Legislature had provided for setoffs in the no-fault act: "Because the first-party insurance proposed by the act was to be compulsory, it was important that the premiums to be charged by the insurance companies be maintained as low as possible. Otherwise, the poor and the disadvantaged people of the state might not be able to obtain the necessary insurance.").

[16] This section provides, in part:

> Work loss consisting of loss of income from work an injured person would have performed during the first 3 years after the data of the accident if he or she had not been injured.

under MCL 500.3107(1)(a) because food is not necessary for Griffith's "care, recovery, or rehabilitation" under that subsection. Because the rule announced in *Reed*, *supra*, is contrary to the language of the above provisions, we overrule the Court of Appeals decision in *Reed*.

V. CONCLUSION

We conclude that defendant is not required to reimburse plaintiff for Griffith's food costs under MCL 500.3105 and MCL 500.3107(1)(a) of the no-fault act. Accordingly, we reverse the judgment of the Court of Appeals.

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